Homo Apostolicus

The Apostolic Man, Instructed for the Hearing of Confessions; or, The Practice and Instruction of Confessors

St Alphonsus Maria de Liguori

(B. Alphonso de Ligorio)

An English translation of the Latin edition
Vesontione (Besançon): apud Outhenin-Chalandre Filium, 1837

Note on this translation. This English text was produced by a machine-assisted translation pipeline from an OCR transcription of the 1837 Besançon Latin edition. The draft translation was made by a specialised translation model, assisted by a dedicated ecclesiastical-Latin knowledge base which supplied Douay–Rheims wording for Scripture quotations and verified place-names and terminology. It is an unofficial reading aid and has *not* undergone formal scholarly revision; occasional errors will remain, particularly in the dense citation apparatus. Marginal references of the form [*Latin ed. p. N*] indicate the corresponding page of the source edition, for alignment with the original scans. Blank leaves and unreadable pages of the source have been omitted. Generated 2026.

[*Latin ed. p. 5*]

265.62 2627h 1837. *IO APOSTOLICUS INSTRUCTUS AD AUDIENDAS CONFESSIONES, SIVE PRAXIS ET INSTRUCTIO CONFESSARIORUM*, by B. Alphonsus de Liguori, with notable doctrines of Moral Theology by the same author. Appendices of use are added, along with a list of questions which the author revised. In VESONTIONE, at the press of OUTHENIN-CHALANDRE FILII, Publisher, Printer to the Archbishop. In PARISIIS, in the bookstore of the same, (on the commonly called street Git-le-Caur, no. 4.) — 1837. *PASSE CLARAE MARCHET*.

[*Latin ed. p. 7*]

THE AUTHOR'S INTENTION MUST BE ENTIRELY CONSIDERED FOR UNDERSTANDING THE WORK. It is fitting here to preface with some knowledge of the purpose and scope of this work. I had already published, in Neapolitan presses, another, larger work on Moral Theology, which was subsequently printed in Venice by the REMONDIAN presses in three folio volumes, with some of my additions, and which has been frequently reprinted, and, recently, has appeared again with new additions, and which has been received with favor in many parts of Europe. In completing that work, I spent fifteen years of labor, examining and weighing the doctrines of many, whom I investigated, finding some to be more justly benevolent; namely, those who, misled by a false zeal for the salvation of souls, indulged too much in license, not without prejudice to divine and ecclesiastical laws; while others, detesting such leniency, fell into the opposite extreme of excessive rigor. My greatest labor in this was to select, from this vast collection of opinions, those sentiments which, on the one hand, would observe due obedience to divine and ecclesiastical precepts, and, on the other hand, would not add burdens that are not imposed by God, restricting each to that perfection which, according to human weakness, is morally impossible for the common faithful. From this, having been instructed partly by the reading of theologians, whom I studied with a desire to avoid any bias, and partly by the experience of thirty years of confessions and missions, I composed the aforementioned work for the instruction of the young men of our congregation. But because that work, being more voluminous and extensive, is not so easily read, or could be obtained by many; therefore, I have thought (and, moreover, spurred on by the desire of many) to publish the present work.

[*Latin ed. p. 8*]

(vi) Concerning the Catechism. My principal aim in this work has been to provide a practical instruction, suitable for public use, on the proper administration of the Sacrament of Penance; but because, in practice, confessions can never be properly received, nor, as is fitting, the souls guided, unless one possesses knowledge of the principal principles, doctrines, and

questions of moral theology; therefore, I have endeavored to present here, in a concise and accessible style, everything that pertains to a sufficient, and indeed necessary, instruction for any confessor, noting in their appropriate places, the canons, bulls of the Popes, and even the definitions of the Holy Congregations, of which too little knowledge is found in other books. The work has been reduced to a concise form, so that it may be acquired at a lower cost, and so that it may be read more easily. As for the order, the first part deals with the Precepts of the Decalogue and of the Church. The second part deals with the Sacraments and Censures. The third part deals with Privileges, and within it, the faculties that Bishops and regular Prelates possess with regard to absolution from reserved sins and censures. Then, it is explained how a confessor should practically conduct himself with sinners in the immediately present circumstances, or with habitual and recidivists; and how he should conduct himself with different types of people, namely, the uneducated, children, the deaf, the mute, those condemned to death, the possessed, young girls, and other women. Finally, four Appendices have been added. In the first, there is instruction for guiding devout souls towards perfection, with an exercise in meditation and mortification, the frequent use of the Sacraments, and especially the Holy Communion. There will also be a discussion of supernatural prayer, and particularly of the individual stages of contemplation; and of the manner of guiding souls whom God elevates to such extraordinary graces, according to the various states in which they are found. In the second Appendix, there is a practical guide for assisting the dying, with appropriate warnings for the priests assisting, regarding remedies against temptations, concerning the last sacraments, and concerning the sentiments that should be suggested to the dying, during their illness and agony.

[*Latin ed. p. 9*]

(VII) With knowledge of the signs of approaching death. In the third appendix, there is an examination for those being ordained, in which the candidate is instructed concerning the sacraments in general, and especially concerning the sacrament of Holy Orders in general, and in the specific manner of whatever order. There, matters are discussed concerning the vows of chastity, the canonical hours, and the censures in general and in specific, as far as is necessary for those being ordained, and finally, concerning the Sacrifice of the Mass and the power and office of the priest. In the fourth appendix, there are certain very useful admonitions for confessors and pastors, along with a practical instruction on mental prayer. In this booklet, not only is there (albeit briefly) everything that is contained in the aforementioned theology, but moreover, other things have been added which are not found in the previously published work. All to the glory of

Jesus and Mary!

[*Latin ed. p. 11*]

INTRODUCTION. Those who diligently perform their duties as confessors will receive a reward in Heaven not of little importance, and they will work out their own certain and eternal salvation, by laboring for the salvation of sinners. We are assured of this by the Apostle James with these clear words: "He must know that he who causeth a sinner to be converted from the error of his way shall save his soul from death and shall cover a multitude of sins." (Jas 5:20). But the Church laments the ruin of so many of her children, due to the fault of bad confessors; for in their actions, whether good or bad, the salvation or ruin of the people is chiefly determined. "Give suitable confessors," said Saint Pius V, "and you will see the complete reformation of all Christians." Therefore, it must be held for certain that if all confessors possessed that knowledge and that integrity of morals which this ministry demands, the world would not be so contaminated by so many sins, nor would Hell be so filled with souls day by day. But we do not here demand that habitual goodness alone, by which a man is simply constituted in the state of grace, but a positive goodness, namely, that which is acquired through the exercise of virtues, as befits a minister of penance, who has need of two things: one, to sustain his own life; the other, to nourish his flock. For the confessor must direct the consciences of others, lest he be too lenient, or too severe.

[*Latin ed. p. 12*]

(x) erret; tot vulnera sibi attrectanda sunt, quin se inquinet; cum mulieribus et adolescentulis versandum sic erit, lapsus eorum in confessionibus maximè pudendos auscultando, quin nec minimum capiat sibi detrimenti: fortitudine cum hominibus præclaris utendum erit, quin cujusvis respectu moveatur: denique totus charitatem mansuetudinem et prudentiam redolere debet. Itaque, ut has omnes adimpleat partes, non vulgari opus est probitate, ad quam nemo attinget, si quotidianā meditatione coadjuvante, in oratione versatus non sit; aliter carebit luce et gratiis huic muneri ritè exercendo necessariis, quod (ut dici solet) humeris angelicis etiam formidandum esset. Præter morum probitatem, Confessarius, cum ipse sit conscientiarum judex, tenetur etiam, ut supra attigimus, scientiā ad rectè judicandum esse præditus. Propterea non tantum ea ad meram praxim spectantia, sed etiam animadversiones notabiliores, et scitu magis necessarias super præcipuis moralis tractatibus, in hoc brevi opere colligenda duxi; definitiones, principia, textus tum civiles, tum canonicos, item sanctiones Pontificum, et sacr. Congreg. declarationes, ac insuper doctrinas magis necessarias magisque acceptas, adnotando; materias enim quæ diligentiori indigent disceptatione, ad opus morale quod in duobus tomis distinctum in lucem edidi, recurrat; ubi eas

suis rationibus, et cum citatione locorum auctorum qui de illis tractant, fusè discussas reperiet. Hic solummodo breviter eos delibabimus, quantum satis erit ut lectoris diligentia excitetur ad eas librandas. Nonnullæ sententiæ quas hic secuti sumus, alicui forsan aut nimis rigidæ, aut nimis benignæ videbuntur; sed obtestarer hunc ut antequam...

He errs; so many wounds must be inflicted upon him, that he will be defiled; he will have to deal with women and young people, and in hearing the confessions of others, he must be so careful not to be offended, lest he suffer even the slightest harm; he must act with fortitude in the presence of eminent men, lest he be swayed by any respect; finally, he must be entirely filled with charity, gentleness, and prudence. Therefore, to fulfill all these duties, mere integrity is not enough, for no one will attain it unless, with the help of daily meditation, he is devoted to prayer; otherwise, he will lack the light and the graces necessary for properly performing this office, which (as is commonly said) would even be feared by the shoulders of angels. Besides moral integrity, the confessor, since he is the judge of consciences, is also, as we have mentioned, required to be endowed with knowledge in order to judge correctly. Therefore, I have included in this brief work not only those things that pertain to mere practice, but also more noteworthy observations, and knowledge that is more necessary, regarding the principal moral topics; definitions, principles, texts, both civil and canonical, as well as the decrees of the Popes and the Sacred Congregations, and also more necessary and more accepted doctrines, are noted; for those matters that require more thorough discussion, the reader should refer to the moral work that I have published in two volumes, where he will find them discussed in detail, with their reasons, and with citations of the authors who treat of them. Here, we will only briefly touch upon them, as much as will be sufficient to arouse the reader's diligence to read them. Some of the opinions that we have followed here may perhaps seem too strict, or too lenient, to some; but I would urge this reader to, before...

[*Latin ed. p. 13*]

(xi) With this distinction, he will condemn those who, having examined the aforementioned work, which is divided into three volumes of a larger format (which has been printed once in Neapoli and several times in Venetiis), frequently cite passages from it, because I have read there, at length, the arguments and the authorities of the Doctors who defend them, and I believe that these are not at all foreign to reason, nor do they seem to me to be rashly attached to it. Whenever citations are presented in this work without any author being mentioned, the reader should know that they are taken from our Moral Theology. The letter L. denotes a book; Tr.

a treatise; N. a number; P. a page; V. a verse.

[*Latin ed. p. 14*]

TRACTATE I. ON CONSCIENCE. CHAPTER I. ON RIGHT, ERRONEOUS, PERPLEX, AND SCRUPULOUS CONSCIENCE. 3. Of Right Conscience. — 4. Erroneous. — 5. If ignorance is present, concerning [natural] precepts. — 6. If someone considers the desire for evil to not be a sin. — 7. Of Perplex Conscience. — 8. to 11. Of Scrupulous Conscience. 3. — Right conscience is that which dictates the truth of the matter, against which, he who acts, certainly sins. 4. — Erroneous conscience is that which dictates falsehood. This is divided into invincible and vincible, or culpable. Invincible conscience is when no doubt of error occurs to the mind, and according to this, we are bound to act; for since this is the proximate rule (as stated above) of our actions, we must act according to its dictates. Vincible conscience is when a doubt of error occurs to the mind, and there is an obligation to overcome the error, and furthermore, ordinary (but not the greatest) diligence which ought to be used to acquire the truth is neglected. He who acts with such conscience always sins, whether he acts according to or against conscience. 5. — It is questioned here, whether ignorance can arise concerning natural precepts. Since ignorance is invincible, it is also blameless, as is clear from proposition 2 of Michael Bai, condemned by Alexander VIII. "Although invincible ignorance of natural law may exist, this does not excuse from formal sin in the state of fallen nature." Likewise, M. Nicolius said in *Defensa de probatione*, at the end of epistle 5 of Montaltatius, apud Cont. Tournely, vol. 1, page 12, at the end, under the name of Wendrochii, saying that such ignorance is a punishment of original sin. But this has already been condemned against Bai. Therefore, it remains to be seen whether invincible ignorance can exist concerning natural precepts. We answer, in accordance with the common opinion (contrary to Simmchium, and a few others), held by St. Antoninus, Soto, Maldonatus, Suarez, Azorius, Sanchez, Gommachæus, Duvallius, Wigandt, Gonet (who rightly calls the contrary opinion singular and improbable), and many others among whom is the most learned Cardinal Gotti (1), that a distinction must be made between first principles and immediate conclusions, from mediate conclusions. With this established, we say, concerning first principles, or concerning the principal precepts of natural law, which are self-evident, and dictated by synderesis, as we stated above, that God must be worshipped; that which you do not wish to be done to yourself, do not do to another; that invincible ignorance cannot exist. Concerning, however, immediate conclusions, or those immediately deduced from principles, such as the precepts of the Decalogue, invincible ignorance does not exist, except in the uneducated, and for a short time, or unless some apparently mitigating circumstance is added. Concerning, however,

mediate conclusions, or those remotely deduced from the precepts of the Decalogue, such as the precepts concerning usury, avoiding scandals, and the like; concerning these, we say that invincible and blameless ignorance can exist, then (1) Vol. 2, treatise 5, question 1, doubt 4, number 17, from St. Thomas, 1-2, question 19, article 6. Add Tourn. treatise on human actions, chapter 2, article 1, section 2, page 2, conclusion 4, who cites St. Thomas and St. Augustine. Add Mercorum, book on the practice of opinion, Vincent Baron, in post, question 4, article 5, last.

[*Latin ed. p. 15*]

CHAPTER I. OF RIGHT CONSCIENCE, etc. 3. When, with the common diligence that is due (as we have said), one cannot overcome doubt. See in our Moral Theology (1) where this is confirmed by many authorities of St. Thomas; and Father La Croix (2) confirms the same with the authorities of St. Bonaventure and Albert the Great. And this is confirmed by the same proposition 2 from the writings of Baianus, where it is noted that the Church either believes, or holds to be very probable, that ignorance, even of natural law, excuses a person; for if it held the contrary, it would not have declared that invincible ignorance excuses a person from sin, since it would condemn the proposition of an impossible event. 6. There are not lacking among the Doctors who excuse from mortal sin those who believe that actions alone are sin, and not the desire to sin: but I have never been able to agree with this opinion, because I cannot understand how it can happen that one who already knows that a certain action, e.g., fornication, is a sin, can not sin by deliberately desiring it and deliberately committing it: it seems impossible to me that anyone would believe that they are not sinning when they deliberately intend to commit an act which they already know is an offense to God (3). 7. A perplexed conscience is that in which one is placed between two precepts, e.g., preserving the life of a neighbor, and not harming, and he himself does not know what to do. What should be done in this case? 1. He should consult wise men, if he can. 2. If he cannot, he should choose the lesser evil, avoiding rather the transgression of a natural precept, than of a human, or divine positive precept. 3. If it is not easy for him to deliberate which of them is the lesser evil, then, whatever he decides, he does not sin, because he lacks the necessary freedom for sin. 8. A scrupulous conscience is that which, from a slight apprehension, doubts about the honesty of some action, and therefore often fears that sin is present where it is not. Many Doctors give rules for the scrupulous; but truly, after prayer, no remedy is more effective (indeed, the only one, as rightly says Father Segneri) than to obey in every way the director. Therefore, the confessor should first of all suggest to this kind of penitent these two principal principles. First, that he safely walks before God, if he obeys his spiritual father, where there is no evident sin: for then he does not obey a man, but God Himself, who said: "He that heareth you, heareth me."

Thus teach all Doctors and masters of the spiritual life, such as St. Bernard, St. Antoninus, St. Francis de Sales, and St. Philip Neri, St. Theresa, Blessed Dionysius the Carthusian, Blessed Humbert, Very Reverend Father Avila, Great Gershon, etc. Secondly, that the greater scruple which should trouble him is disobedience, for which, not only may he lose peace of mind, devotion, and progress in virtues, but also he exposes himself to great danger of being deceived, of losing his health, and, which is worse, of endangering his soul: for scruples can lead to such despair that they would drive him to such a point that he would inflict death upon himself; as has happened to not a few, or that they would throw themselves headlong into every kind of vice. Also, the confessor should suggest to the scrupulous penitent, as rightly says the learned author of the Instructions for confessors of novices (4), that with God, as is commonly said, reasons are not gathered, but that God, for our good, wants us to live in uncertainty about our salvation. Therefore, by using moral diligence to avoid offending Him, our care is a testament to His mercy.

(1) L. i. n. 169.

(2) Num. 720.

(3) L. i. n. 18.

(4) P. i. n. 76.

[*Latin ed. p. 16*]

TRACTATE I. ON CONSCIENCE. We must acknowledge that, without the help of His grace, we cannot achieve salvation, and with perseverance, trust, and peace, we shall obtain this from Him. "It is best," said St. Francis de Sales, "to walk with a blindfold under the guidance of divine Providence, amidst the darkness and perplexities of this life." "Let him rest while he understands from his spiritual father that he is making good progress," and let him not seek the cause of this, "for nothing is lost by obedience." St. Philip Neri asserted that those who obey their confessor are certain that they will not have to give an account of their actions to God. On the other hand, St. John of the Cross said that to be satisfied with what the confessor says is pride, and a sin against faith.

9. Next, the confessor must: 1. Speak earnestly to those who are overly confident in Jesus Christ, who died for us, and in His most holy Mother, who has been given great power by God to those who take refuge in her. Therefore, he should encourage them to live securely, always entrusting themselves to the protection of Jesus and Mary, who, without doubt, will hear those who invoke them. 2. Forbid them to read books that arouse scruples, and to associate with those who are scrupulous; and to those who are greatly troubled by these things, he should forbid them to attend sermons filled with terror, nor should they examine their conscience in matters where they apprehend scruples, but where they have no just cause.

3. If the scruple concerns the fear of assenting to evil thoughts (e.g., against faith, purity, or charity), the confessor should be prompt and fearless in telling them to disregard them, and to sincerely affirm to him that such thoughts, rather than consent, are their punishment. In this, the confessor must especially keep in mind the rule that the Doctors teach (3), that those who have a conscience that is fearful should be judged innocent of sin, unless they are more than certain of mortal sin; for such a monster (as Father Alvarez said) cannot enter the soul that detests it, unless it is openly recognized. In this matter, it is also helpful to tell those who are scrupulous not to accuse themselves of such thoughts unless they are certain and can swear that they have consented. And it should be noted that with those who are scrupulous, one must proceed according to general principles, not according to specific rules; for scrupulous people will never be able to deliberate properly according to specific rules, always doubting whether that rule is suitable for the present case, which will always seem to them to differ from the case they have heard from the confessor.

10. 4. For those who have scruples about past confessions, either because they think they have not explained all the circumstances, or because of a lack of sorrow. If the confessor notices that they have already made a general confession, or that they have repeated confessions for some time, he should urge them not to dwell on these matters, nor to speak further about past sins, unless they can swear that those sins were certainly mortal, and also that they have never confessed them. The Doctors teach (4) that those who are scrupulous, even if they have omitted a serious sin through carelessness, are not held (at least if they are not certain) to such great inconvenience and danger regarding the integrity of confession, from which even this lesser inconvenience can be excused (5). In this, the confessor must be firm, so that he may be obeyed; and if the penitent does not obey, he should rebuke him, deny him communion, and, as much as possible, reprove his obstinacy.

(1) In vita, l. 1, cap. 20.

(2) Tract. de spinis, coll. 4, 2 r., n. 8.

(3) Lib. 6, n. 476.

(4) Lib. 1, p. 16.

(5) Lib. 6, ex n. 476.

[*Latin ed. p. 17*]

CHAPTER II. ON DOUBTFUL CONSCIENCES, ETC. 5. Scrupulous persons must be treated with care, but when they disobey, they must be dealt with severely: for if they are deprived of this anchor of obedience, they will certainly perish, either falling into madness or giving themselves over to depraved habits. 11. Next come those scrupulous persons who fear to sin in every action. To these, it must be commanded that they act freely

and overcome their scruples; indeed, they are always bound to overcome them, unless they clearly see that the action is a sin. As the Doctors teach, following Father Segneri (1). Father Segneri, *Instructio de Poenitentia*, last chapter. It makes no difference that they act with actual fear (not with a deposited doubt, which is almost impossible for scrupulous persons); for that fear is not the true dictate of conscience, which is also called formed conscience, as Gerson rightly distinguishes (2); nor is it a true practical doubt, nor does it invalidate the judgment previously made, which perseveres in force, even though, due to the intensity of the fear, one may not be aware of it at that time; namely, that one is not sinning in that which they do not clearly know to be evil; provided that they are not acting against their conscience, but against that empty fear (3). Therefore, the confessor must command such penitents, in virtue of obedience, to act with firmness and overcome their scruples, freely performing that in which the scruple is an impediment to them; and he must also command them not to confess about it again.

CHAPTER II. ON DOUBTFUL CONSCIENCES. 12. Negative and positive doubt. 13 and 14. Speculative and practical. 15 and 16. If the law is doubtful. 17. If a vow is doubtful. 18. If a superior commands a doubtful action to be performed. 19. In case of doubt, what should be done in fasting or Communion. 20. On impediment and the obligation to doubt. 12. A doubtful conscience is one that, remaining undeliberate, suspends assent on both sides. However, it must be distinguished between negative and positive doubt. Negative doubt is when there are no reasons apparent on either side by which the intellect could assent to the other side; and this should strictly be called a doubt, which is defined as: "Suspension of assent concerning some object." Positive doubt, on the other hand, is when there is a serious reason for assenting on both sides, or at least on one side, even with fear of the opposite; therefore, positive doubt is the same as a probable opinion, which we will discuss in the following point. 13. It must be distinguished between 1. speculative and practical doubt: speculative doubt is when one doubts about the truth of a thing, such as whether a war is just or not: whether painting on a feast day is servile work: whether Baptism is valid with distilled water, etc. Practical doubt, on the other hand, is when one doubts about the propriety of a thing, such as, for example, whether it is permissible in practice to paint on a feast day: to fight in a war that is dubiously just. Therefore, one must always distinguish between what is true and what is licit. For speculative doubt concerns the truth, while practical doubt concerns the licit. With this established, we say that it is not permissible to act with a practical doubt, because a person must be morally certain about the propriety of a thing in performing an action; otherwise, because he exposes himself to the danger of sin, he sins, according to Ecclesiastes 3:21, "He that loves danger shall perish in it." And he will be guilty of the harm of that sin of which he has doubt; therefore, if

he doubts whether he is a thief—(1) Book x, no. 17. (2) Ibid. (3) Ibid., no. 18 and 19.

[*Latin ed. p. 18*]

6. TREATISE I. ON CONSCIENCE. Thus, if one steals, and doubts whether the theft is mortal, he commits a mortal sin. But if one is certain that an action is sinful, yet uncertain whether it is mortal or venial, some condemn it as mortal; however, Navarr, Valentia, Granada, and La Croix argue that it is only venial, provided that one does not perceive a serious risk of sinning gravely, nor is there an obligation to avoid the action; and provided that the action is not certainly a mortal sin, and that its malice is not clearly apparent (1).

14. Conversely, one may legitimately engage in speculative doubt if the one acting is guided by reasons that lead him to practically judge the action to be permissible. There are reasons to judge the truth of a matter, e.g., whether a war is just, whether painting on a feast day is servile work; there are reasons to judge an action to be honest, namely, whether it is permissible to fight in a war that is dubiously just, to paint on a feast day, from another certain principle (such as "Better is the condition of the possessor," or something similar), setting aside the doubt. In such cases, in matters of doubt, one must consider whose possession, the precept or freedom, is at stake. And to determine this, one must consider for which side the presumption stands, for the side that transfers the burden of proof to the other is considered to be the one for which the presumption stands: for an action is not presumed unless it is proven; as is stated in l. 2 de probatione, and from l. In Bello de captivis.

15. From this, it follows first that if one possesses freedom, it must be proven that a certain obligation exists; otherwise, a doubtful precept cannot impose a certain obligation, nor can it restrict the freedom that God has certainly given to man, so that he may do what he pleases, except for those things that are manifestly forbidden or imposed upon him, as Ecclesiasticus 15:14 states: "God made man from the beginning, and left him in the hand of his own counsel. He gave him commandments and statutes." If one wishes to observe the commandments, he shall preserve them. Conversely, if a law has certainly been established and promulgated, a doubt arises whether it has been abrogated or revoked; or, if it is observed, whether it has been dispensed with; because then the law remains in possession.

16. The same must be said if there is doubt about the acceptance of a law. For if it is just, it should be presumed to have been accepted, considering this other principle: Ordinarily, it is presumed that an action has been performed that was legally required. This corresponds to another moral rule commonly accepted by Doctors, which states that if one doubts whether or not an action has been performed, it is not presumed to have been performed unless it is proven, as stated above; but if an action has cer-

tainly been performed, and one only doubts its validity (e.g., of a marriage, confession, will, etc.), one must always stand by the validity of the action; l. Quoties, ff. de rebus dubiis, as is stated that doubtful laws favor the validity of actions. This is also the case with the axiom: "No one is presumed to be evil unless it is proven" (2).

17. Secondly, it follows that whatever is said about the law, the same must be said about a vow, which is a certain particular law that a person imposes upon himself. Therefore, if someone doubts, and is not certain about a vow made, he is not bound by the vow, as is the common opinion of Cabassutius, Suarez, Rebellio, Prado, Sanchez, Castropal, Anaclet, Salmant, and others (3). The same is said if there is doubt whether something is included or not in a vow made or a law promulgated; then, with respect to that part about which there is doubt, the vow or the law does not hold. This is indicated in cap. Ex parte 18, de censibus; where, if some had vowed something, and doubted whether they were bound to the greater or the lesser, (1) Lib. i. n. 22 and 25. (2) Lib. 1. num. 26 and 27. (3) Ibid. 28.

[*Latin ed. p. 19*]

CHAPTER II. ON DOUBTFUL CONSCIENCES, ETC. 7. If, according to a promise made, a lesser penance is prescribed, the obligation extends only to the lesser penance. Conversely, if a certain penance is prescribed, and there is doubt about its fulfillment, the penance must be performed, since possession of the penance implies the obligation to fulfill it. Nevertheless, Lugo, Roncaglia, Laym, Salmantic, Carden, La Croix, and others, contend that if one reasonably believes that the penance (or confession, or divine precept) has been fulfilled, they are not bound to do anything further, because God is satisfied with the probable fulfillment of His law. They argue that the obligation of the vow does not preclude the possibility of fulfillment; for, with a probable fulfillment of the vow, the possession of the obligation becomes doubtful, and therefore the person remains free. However, this reasoning does not seem entirely sound to me; for, in the case where there is doubt about the making of a vow, I am certain that there is no obligation to fulfill it, because the person is then free; but in the case where a vow has certainly been made, I cannot understand how a probable fulfillment of the vow can release the person from the obligation of the vow, which still remains in their possession; for just as the vow is certain, so too its fulfillment must also be certain. This opinion could only be admitted if that probability were such that it could establish a moral certainty of the fulfillment of the vow. The same applies to the obligation of reciting the canonical hours and performing sacramental penances. If someone makes a vow and then, forgetting the vow, performs the promised action, we say that they are not then obligated to perform it again, because they can always reasonably believe that the action performed in fulfillment of the vow has been applied to the satisfaction of the vow, as will be said

in treatise 10, number 120, at the end. Similarly, etc. 18. — It is inferred that, when a superior commands, a subordinate is obligated to obey, whenever the matter commanded is not certainly illicit; for, when there is only doubt about the impropriety of the matter, the authority of the superior remains, and cannot be removed in doubt. This is the common opinion of St. Bonaventure, St. Antoninus, Cajetan, Silvius, Cabass, Tournely, Azor, Sanchez, Palaus, Salmantic, etc. And it is proven from cap. Quid culpatur, dist. 23, q. 1, where St. Augustine says that a subordinate rightly obeys a prince who commands something that is not certainly unjust. This doctrine of obedience to precepts that are dubiously unjust has this limitation: whenever a danger of serious spiritual or temporal harm is involved; or if the precept is even probably illicit, and at the same time is very burdensome and difficult; thus, Lessius, Soto, Tournely, Prado, Sanchez, Busembai, Castropal, Salmantic, and many others. 19. — It is inferred that, if one doubts whether they have already completed a year, they are not obligated to fast; but if they doubt whether they have reached the age of 60, in which age they are probably exempt from ecclesiastical fast, as we will say in treatise 12, number 25, then they are obligated to fast, because they possess the precept to fast. The same applies if someone doubts about the age for the sacred order, or for the benefit required, because they then possess the precept of the Church. Similarly, if it is a Friday, and one doubts whether the middle of the night has already passed, they may, with due diligence, eat meat. But what about someone who doubts whether they have swallowed anything after midnight, may they or may they not receive Communion? Some deny it; but many others, such as Laym, Sa, Busembai, La Croix, Sporer, etc., reasonably affirm it, saying that the law of fasting is rather prohibitive, namely, that no one should receive Communion without fasting, as is gathered from the canons cited in the work. Therefore, (1) Lib. r. num. 76. — (2) Ibid. num. 51, and more fully l. 4. num. 47. v. Limitant. — (3) Ibid. num. 52. — (4) Ibid. — (5) n. 38.

[*Latin ed. p. 20*]

TRACTATE I. ON CONSCIENCE.

8. It is always to be understood that, unless a case arises in which the prohibition of the law is clearly in force, for example, a certain period of fasting, the person is in a state to receive Holy Communion.

20. It follows that, when there is a doubt about an impediment to marriage, and a marriage has been contracted in good faith, after due diligence has been exercised, and the doubt persists, either spouse may then perform, or request, the marital act (1).

It follows that, when one is certain of the obligation, but doubtful about the means of fulfilling it, one is bound to fulfill the obligation. On the other

hand, when one is doubtful about the obligation itself, and is a possessor in good faith, one is not bound to do anything, as long as the possession is legitimate, for legitimate possession gives a certain right to retain what is possessed, against which the right of another cannot prevail unless that right is certain. Hence, St. Augustine, in Canon 34, question 1, says: "A possessor is rightly called a possessor, as long as he does not know that he possesses another's property." Thus, Castrop, Laym, Lugo, Roncaglia, Cardinal Molin, Sanch, Cardinal Sfondratus, Sporer, and many others (2).

However, this is not the case if the possession is uncertain, namely, doubtful, or begun with doubtful faith, because in such a case, restitution must be made in proportion to the doubt (3). And I believe that this must also be done, whatever others may say, in the case where the possessor, upon the arising of a doubt, has neglected to exercise due diligence in a timely manner, because he has defrauded the neighbor, at least of the hope that he might be found to be the true creditor, and he is therefore bound to make restitution in proportion to that hope.

CHAPTER III. ON PROBABLE CONSCIENCE.

21. On Probable Conscience.

22. In matters of faith.

23. Of medicine.

24. Of justice.

25 to 27. Of the sacraments.

28. In causing harm to another.

29. Degrees of probability.

30. On a slight probable opinion, and on a very probable opinion.

31 to 79. On probable, and more probable.

21. A probable conscience is that which dictates that an action is licit because of some probable opinion. A probable opinion is that which is based on a weighty foundation, suitable to incline the assent of a prudent person. But above all, it must be understood that it is not permissible to act on a probable opinion when there is a risk of actually causing harm to another, especially when that other is in the lawful possession of his rights; for it must be distinguished that there is one case when it is a question of a simple right, namely, whether we can licitly do something; and another case when it is a question of fact and of the truth of the matter; for if such an opinion is not true, the other will certainly suffer harm, and therefore it will not be permissible to act on a probable opinion.

Let us give an example: If I doubt whether that person is a man or a beast, I may not strike him, unless I am certain that he is a beast; even if I believe it is more probable, or even probably, that he is a beast; for if he is truly a

man, by striking him, even with a more probable opinion, I will not avoid the harm to him.

22. From this it follows that, in matters of faith and eternal salvation, it is not only illicit to follow a less probable opinion, as the proposition 4 stated, which was condemned by Innocent XI; but also a more probable, and even a very probable opinion; and that one must adhere to the safe, and consequently, the Catholic religion, which makes men safe; for the other religions, being false, although some of them may perhaps seem more probable to someone, he is nevertheless deprived of the sacraments, and of other means necessary for salvation (1).

(1) Book 1, chapter 33, and more fully, book 6, number 903 and 904.

(2) Book 1, chapter 34.

(3) Number 36, see Preface, and book 6, number 611 and number 702.

[*Latin ed. p. 21*]

CHAPTER III. ON PROBABLE CONSCIENCE, ETC. 9. In order to attain eternal salvation, one must certainly not act in such a way as to jeopardize one's own beatitude. 23. – It follows that a physician is obligated to use safer remedies for the health of the sick, and it is not permissible for him to use any medicine of which he is uncertain whether it will be beneficial or harmful, lest he expose the patient to danger. The Doctors themselves are in doubt as to whether, if the patient's health is already hopeless, it is permissible for the physician to administer a medicine from which the patient might recover, or from which his death might be hastened. Some deny this, but many others, among whom are Sanchez, Valentia, Layman, Bonaventure, Busembach, Filliu, etc., assert, not improbably, that it is prudent for a man, even at a slight risk to his life, to expose himself to a moderate danger in the hope of perfect health (1). 24. – It follows that a judge must judge according to the more probable opinion, since he is bound by both divine and human law to grant each his due according to the merits of the case. Therefore, Pope Innocent XI rightly condemned the following proposition: "It is probable that judges can judge according to even less probable opinions." Nevertheless, Cardenas, Filguerra, La Croix, and others note a more valid foundation for this, namely, that a defendant who is lawfully in possession of a thing cannot be deprived of it by a judge, unless the plaintiff presents reasons that are not only probable, but also convincing; for, as stated in n. 20, lawful possession of a thing confers a certain right to the possessor to retain it (until it is established that the right belongs to another). This is demonstrated by many arguments, and by the authority of Doctors, and even by clear texts, as shown by Cardenas (2). 25. – It follows that in the administration of the sacraments, the minister cannot rely on a probable or more probable opinion regarding the validity of the sacrament, but rather must follow those that are safer, or morally certain. Therefore, Pope Innocent XI condemned the following proposition: "It is

not illicit in administering the sacraments to rely on a probable opinion regarding the validity of the sacrament, provided that a safer opinion is not available, unless this is prohibited by law, a contract, or the risk of a serious harm." Therefore, a probable opinion alone must not be used in the administration of baptism, holy orders (both priesthood and episcopacy). However, it should be noted that in only two cases is it permissible to rely on a probable opinion, even regarding the validity of the sacraments, namely: 26. – The first case is when there is extreme necessity; in such a case, it is permissible to rely on any probable opinion, even a slight one, as many Doctors say (3). However, the condition must always be added, if it is applicable, because in such circumstances, the condition removes any injury from the sacraments, if they are administered imperfectly, and necessity provides a just reason for administering the sacrament conditionally. 27. – The second case is when it is presumed that the Church will provide for the validity of the sacrament, as happens when a marriage is contracted that is probably valid; in such a case, it is presumed that the Church will remove any impediment, if one ever existed, in order to render the marriage certainly valid; according to the common opinion of Doctors, including Suarez, Lessius, Concinius, Cardenas, Sporer, and others, along with Lugo, who testifies that this is the presumption of the entire Church (4). The same applies to the sacrament of penance, when it is a question of the jurisdiction of the confessor; for, when there is a truly probable opinion regarding the jurisdiction, the Church also provides for it by conferring it, if the confessor should lack it, and

(1) Lib. 1. n. 46.

(2) Lib. 4. n. 210. v. Qu. 11.

(3) Lib. 6. n. 205 ad III. et 482. in fin.

(4) Lib. 1. n. 50. l. 6. n. 901.

[*Latin ed. p. 22*]

TRACTATE I. ON CONSCIENCE. This is derived from the universal custom of confessors to absolve, with probable jurisdiction, as commonly testified by Suarez, Lugo, Cardinal Sanch, Bonaventure, Lessius, Concinius, Malderus, Castropus, Salamanca, La Croix, etc. However, I do not admit this opinion unless there is a grave necessity, or at least a great utility, as Wigandt, Holzmann, Marchant, Sporer, Elbel, etc., rightly limit, along with Suarez himself; otherwise, the Church should not presume to favor the freedom of priests.

28. Therefore, as stated in n. 21, it is not permissible to act on a probable opinion to the detriment of another. However, this (as we have already noted) applies only when the other certainly possesses his right; otherwise, an opinion cannot be practically probable in a legitimate sense, or a proximate probability, as the Doctors say, for example, the opinion that

whenever someone is already notorious for infamy in a certain place, no serious injury is done to him if someone else publicly proclaims his crime, even if it is hidden. See other examples of this kind in the work (1). The reason is that in all these cases, the other is not considered to have a certain right, or at least a certain possession of that.

29. What has been said here applies when dealing with a pure fact; otherwise, it will be different when dealing with a mere right, and with the mere honesty of the matter; then it is not permissible to act on a probable opinion. But here we must consider what kind of opinion is required, and what kind it must be, in order to be considered probable, and how we can lawfully act on it. Therefore, we must distinguish between a weakly probable opinion, a probable opinion, a more probable opinion, a highly probable opinion, and a morally certain opinion. A weakly probable opinion is one that rests on a basis that is not sufficient to persuade a prudent man. A probable opinion is one that rests on a serious basis, both internal to reason and external, namely, the authority of Doctors, so that it is capable of influencing the assent of a prudent man, even if with some hesitation regarding the opposite. A more probable opinion is one that rests on a more serious basis, but also with a prudent hesitation regarding the opposite, since the contrary opinion may sometimes be true, although it may appear less likely. A highly probable opinion rests on a basis so serious, or very serious, that the opposite opinion does not appear to be highly probable. But since a highly probable opinion does not exceed the limits of probability, although it holds a prominent place among probable opinions, it does not exclude all prudent hesitation, since the truth may stand even on the opposite side. Finally, a morally certain opinion completely excludes all prudent hesitation, so that the opposite is considered to be entirely improbable.

30. With these premises, we say: 1. That it is not permissible to act on a weakly probable opinion, as is evident from proposition 3, from the decrees of Innocent XI, which said: "Generally, when we act with a probability, whether internal or external, however slight, as long as we do not go beyond the limits of probability, we always act prudently." And the reason is that a weakly probable opinion cannot be called a true probability, just as a weak fortitude, and a weak expertise, cannot be called true fortitude, and true expertise; but rather they should be called weakness, and inexperience. We say 2. That it is undoubtedly permissible to act on a highly probable opinion, as is evident from proposition 3, from the decrees of Alexander VIII, which said: "It is not permissible to follow even the most probable opinion among probable ones."

31. As for whether it is permissible to act on a probable opinion, there are three opinions; the first of which is that one may lawfully follow an

opinion even... (1) Book 1, n. 53 and following.

[*Latin ed. p. 23*]

CHAPTER III. CONCERNING PROBABLE CONSCIENCES, ETC. 11. It is less probable that one should choose in favor of liberty, even though the opinion in favor of the law is certainly more probable. The authors of the secular world have generally held this view; but we say that it is flawed, and that it cannot be rightly embraced. The reason is that when an opinion in favor of the law is certainly more probable, then the law is no longer strictly doubtful, as happens (as we will explain later) when opinions are equally probable, both in favor of the law and in favor of liberty; but it is morally certain, because it has a firm foundation that it is true; whereas, on the contrary, an opinion less probable, which favors liberty, has such a foundation that it is not true, and therefore remains weakly, or at least dubiously probable, compared to a safer opinion; and therefore, it is not prudence, but imprudence, to wish to follow it. For when it is certainly apparent to the intellect that the truth stands more on the side of the law than on the side of liberty, then the will cannot prudently and without fault follow the less safe side; for then it would not act according to its own judgment, or its own belief, but according to some effort that its will would make to influence the intellect, removing it from that part which appears truer to it, and drawing it to that part which not only appears to it to be untrue, but does not even demonstrate a certain foundation that it could be true. There is also another reason, which we must observe, that we are bound to follow that precept which we can judge to have been sufficiently proposed to us, and it is prudent to believe that something has been sufficiently proposed, when there are more serious arguments for the existence of the law; and it is relevant that the Apostle says: "But whatever is not of faith, is sin." Romans 14:23. From this it follows that, in order to act rightly, we must be morally certain of the honesty of the action. Therefore, we utterly reject that false principle of the probabilists: "He who acts probably, acts prudently." For in order to act well, probability alone is not sufficient, but moral certainty is required, that our action be honest. 32. The second opinion, which some modern writers today hold, is that we can follow any opinion, even one that favors liberty, when that opinion itself is morally certain. We consider this opinion to be too rigid, and one that burdens consciences, by imposing on them such a burden that they can follow no opinions other than those that are morally certain, and in this treatise we will demonstrate that the use of equally probable opinions is undoubtedly permissible. I ask my reader not to despise this statement of mine before he has read all that I bring forward in support of this opinion. To despise what any author says, without understanding what he says, is neither charitable nor prudent. Let it be read; and then let it be despised. 33. Therefore, the third opinion, which is ours, says that when an opinion that favors liberty

is equally probable as that opinion that favors the law, it can undoubtedly and rightly be followed, except in matters of faith, in which we must follow the safer opinion, as is stated in proposition 4 promulgated by Innocent XI, as well as in matters of the validity of sacraments, as is stated in proposition 1 by the same Innocent. The same applies in matters of medicine, in which a doctor is bound to use safer remedies (as doctors commonly teach). Likewise, we cannot use a probable opinion when there is a risk of spiritual or temporal harm to the neighbor, always understanding that (the neighbor) is in certain possession of his rights. The reason is that, among two equally probable opinions, we are not bound to follow the safer one, because a doubtful law cannot create a certain obligation, since a doubtful law does not.

[*Latin ed. p. 24*]

TRACTATE I. ON CONSCIENCE. It is sufficiently promulgated, so that it may obligate us to observe it, as we shall demonstrate with six hundred authorities from St. Thomas and all the Theologians. The authors who maintain that it is not permissible to follow even the most probable opinion are called rigid probabiliorists; while the modern probabiliorists, who believe that it is permissible to use the most probable opinion for the sake of freedom, and who do not require that the opinion be absolutely certain for freedom, as the rigid probabiliorists do, so that the contrary opinion is entirely improbable, are also called probabiliorists, but mild probabiliorists; for they say that, in order for one to licitly use a less safe opinion, it must be morally certain, but broad, so that the contrary opinion is not more probable. However, I will clearly demonstrate, § 2, no. 66, that this opinion, which allows only the most probable opinion for freedom, can hardly be applied by these authors in practice without falling into rigorism. This assertion seems difficult, and perhaps someone believes that I am going to the extreme to render their opinion void; however, I ask my reader to read this entire treatise, because he will recognize that, speaking according to the words of these mild probabiliorists, it cannot be denied that I am saying what I say.

34. — Father Eusebius Amort, a man of no small learning, as evidenced by his various and learned works published in these times, in his Moral and Scholastic Theology, published in 1733 at Bologna, and afterwards at Rome, after he had revised it, as requested by Benedict XIV, as can be read in his preface, writes that if an opinion that favors a law appears notably more probable (it should be noted that when an opinion is not doubtful, but certainly probable, then it is also notably more probable), it is morally certain that such a law does not obligate, saying that God, according to His divine providence, when He wishes a certain law to obligate, is bound to make it notably more probable: "Whence," he writes, "if the existence of a law is not made credible, it is not itself, morally certain that a law

is given; because, according to the nature of divine providence, God is bound, as He is bound to make His Religion evidently credible, so also He is bound to make His law notably credible, not itself." *Theolog.*, vol. 1, disp. 2, § 4, quest. 10. He means, "not itself," that God, in order to obligate us to observe a law, must make us know that law to be more probable, not from the law itself, but from other arguments. Therefore, the same author writes, disp. 2, § 4, and more fully in quest. 5, that when there are two equally probable opinions, "in this" case there is no law directly prohibiting, because "in this" case there is no "sufficient promulgation of the law, which is an inseparable and essential" characteristic "of the law, if the sole promulgation of the law is that by which the law becomes credible, not itself." Therefore, that promulgation is what makes the law credible. And he adds, "in this way the Fathers understood it, who, in a strict doubt as to whether a law exists or not, did not obligate a man to follow the safer opinion."

35. — And indeed, St. Gregory Nazianzenus (oration 39) speaking of a certain Novatian, says: "Can young widows be permitted to enter into marriage because of the weakness of youth?" But Paul did not hesitate to do so, of whose teachings you are, of course, a disciple. But you say that this is not the case after baptism. By what argument do you confirm this? Either prove that things are so, or if you cannot, do not condemn. But if the matter is doubtful (note),

[*Latin ed. p. 25*]

CHAPTER III. ON PROBABLE CONSCIENCES, ETC. 13 "Let your humanity prevail." St. Leo writes further (Ep. 9 ad Rustic. Narbon. in praefat. 12. c.): "Just as there are things that cannot be torn away by any reasoning, so there are many things that, either for the consideration of times, or for the consideration of ages, ought to be tempered: that consideration always being observed, so that in those things which are either doubtful or obscure, we may know what is to be followed, which is neither contrary to the precepts of the Gospel, nor opposed by the decrees of the Holy Fathers." He says that it is to be followed, because superiors ought to temper rigor, and not obligate subordinates to follow stricter opinions, when benign opinions are not contrary to the precepts of enough the Gospel, or the decrees of the Holy Fathers. St. Augustine also makes what he says convincing: "For that which is not proven to be contrary to faith, nor to good morals, ought to be held indifferently." He says "proven," therefore, no action is to be prohibited, unless we are certain that it is contrary to faith or to good morals. St. Bernard wrote similarly: "Indeed, each one abounds in his own opinion, where either a certain reason, or an authority which is not to be scorned, is not opposed." (Epist. ad Hugon. d. S. Victorin. cap. 5. n. 18. vol. 1. Oper. ex edit. Maurin. Paris. col. 634.) John Gerson wrote: "It is necessary that a manifestation of the order and will of God be given; for

by the sole order, or by the sole will, God cannot absolutely impose an obligation on creation." (De vit. spir. lect. 2. col. 176.) Joseph Rocasull, prelate of Valencia, also wrote: "In the case where, after diligent inquiry, it is not certain whether a law has been imposed, but the matter remains doubtful, it does not obligate, whether it be a law, or a natural precept." (Lib. 1. de leg. in comm. c. 4. n. 65.) Melchior Canus also wrote against a Scholastic who obligated sinners to the act of contrition on each festive day: "There is no human law, nor evangelical law, by which this precept is asserted; let them produce it, and we will be silent." (Relect. de pænit. p. 4. q. 2. prop. 3. Et num. 5.) He adds: "Since I do not know from whence those Doctors have come to this opinion, I can freely say that the precept is not sufficiently explored." Therefore, Canus felt that we are not bound by those things which are not sufficiently explored. Hence, Dominic Sotus wrote: "When there are probable opinions among grave Doctors, follow both, and you will have a safe conscience." (De just. et jure, lib. 6. quæst. 1. art. 6. circa fin.) Furthermore, St. Antoninus writes openly that, between two equally probable opinions, we can licitly follow the more benign one: "According to the Chancellor, it does not harm a man more to err in an article of faith, which has not been declared by the Church to be something that must be believed necessarily; than it could harm him to commit a moral act contrary to something that is able to be done, which act is not said to be certain from Scripture, or from the determination of the Church, to be illicit. But it is certain that in matters of faith, it is licit before the determination of the Church, to hold one or the other side without the danger of sin, etc. Therefore, it is also licit to hold one opinion in morals, according to what has been said above, provided that it is not felt to be contrary by a more prudent person." (The same is felt by Du-Hamel, a modern author) (Theol. lib. 2. de act. human. cap. 3. in fin.) writing: "This argument (namely, concerning the use of a probable opinion) was recently treated with great prudence by Father Gisbert: first, he demands that the opinion have true probability on both sides, not feigned; secondly, that one side should not be almost certain, or much more probable."

[*Latin ed. p. 26*]

14. TRACTATE I. ON CONSCIENCE. » compared; for then the mind must necessarily yield to reason with far greater probability. » And countless other learned authors say the same, such as Bishop Abelly, Bishop of Tapia, Bishop Alvarez, Bishop Ledesma, Bishop Angles, Bishop Zerola, Bishop Maldero, Bishop Tudesco, the Archbishop of Panormi, Bishop Medina, and the Most Reverend Cardinal Sfrondati, Cardinal Toledo, and Cardinal De Lugo. Furthermore, Christian Lupus, and several other Doctors cited in my work on the Moderate Use of Probable Opinion, as can be seen in that work, page 263.

37. Therefore, the reason for our opinion is not a simple one, but rather

a certain principle that all theologians have received and taught, especially St. Thomas (as we shall see), namely, that a doubtful law does not have the force of obligation, because it has not been sufficiently promulgated. For only a doubt or question is promulgated, not a law; and for a law to be sufficiently promulgated, it must be proposed and manifested as certain, as we have said above, and as St. Thomas says with all the theologians, as we shall see.

38. Let us now present the evident proofs that we draw from the teaching of St. Thomas. St. Thomas teaches that "a law is a rule" and a measure of actions, according to which someone is led to act, or is restrained from acting. For the word "law" is derived from "ligare," because it binds to act. I-II, q. 90, art. 1. Therefore, the Holy Doctor teaches this rule or measure of the law, that in order to be observed, it must be manifested by promulgation; and therefore, in the same q. 90, art. 4, he proposes the doubt: "Whether promulgation is of the nature of a law?" and he answers: "A law is imposed upon others as a rule and a measure: but a rule and a measure are imposed by being applied to those who are to be ruled and measured. Therefore, in order that a law may have the force of obligation, which is proper to a law, it must be applied to those who are to be ruled according to it. But such application is made by bringing it to their knowledge through promulgation. Therefore, promulgation is necessary in order that a law may have its force." Therefore, a law, before it is manifested by promulgation, does not have the force of obligation. Hence, St. Thomas defines it as: "A certain ordination of reason for the common good, promulgated." I-II, q. 90, art. 2. Therefore, promulgation is so essential to a law that it must have the force of obligation, so that, if it is lacking, the law will not be binding, as writes the learned Father Peter Collet, successor to Tournely, and he gives the reason: "For a law, in order to be binding, must be given as a rule, and therefore it must be made known; but a law is not made known except by promulgation, since it is only through it that those who are to obey are induced to do so, etc." And consequently, he says that the law has the force of obligation only in the first act, that is, for the time when it has been promulgated; but in order to be binding in fact, it is necessary that it be applied and manifested to the subjects (that it be made known) so that they may regulate themselves according to it.

39. This promulgation is necessary both in human laws and in natural and divine laws, as the same Holy Doctor teaches, who in the same art. ad 1, raises the objection to himself: "But the natural law does not need promulgation; therefore, it is not of the nature of a law that it be promulgated." And he answers: "It must be said that the promulgation of the natural law is from the very fact that God has imprinted it in the minds of men, so that it may be naturally known." Therefore, the promulgation of the natural law

is not made in a human way,

[*Latin ed. p. 27*]

CHAPTER III. CONCERNING PROBABLE CONSCIENCE, etc. There are 15 external signs, e.g., through edicts, or through the voice of a herald; but also through the natural light which God implants in the minds of men. This is more clearly explained by Sylvius, who writes that "The natural law is actually promulgated to each individual when he receives from God the knowledge dictating what ought to be embraced, and what ought to be avoided," in 1. 2, q. 9, art. 4, at the end. The same is written by Cardinal Gotti (Theol. vol. 2, tract. 5, de leg. q. 1, dub. 3, § 3, n. 18) and n. 21, where he writes: "For the law to obligate in act, it is indispensably required that it be proposed to the subjects through promulgation." Immediately following, he says, "Just as a measure does not measure in act unless it is applied to the measurable object; just as a measure cannot actually measure unless it is applied to the thing that is to be measured; so the law cannot be a measure and rule for man unless it is proposed to him through promulgation." The same is written by Dominic Sotus: "No law has the force of law before promulgation, but laws are instituted when they are promulgated"; and he asserts: "Therefore, this conclusion allows no exception." This is confirmed by Father Gonet in chyp. theol. vol. 2, disp. 1, art. 3, n. 57, where, wishing to prove that invincible ignorance of natural precepts can exist, which are deduced mediately from the first principles, he uses this argument: "For the law has no power to obligate unless it is applied to men through promulgation; but the natural law is not promulgated to all men with respect to all precepts that are very remote from the first principles; therefore, it does not obligate all men with respect to those precepts. And therefore, it is possible for invincible ignorance to exist concerning them, and they are excused from sin."

40.—Therefore, when two equally probable opinions are present, the law is doubtful, and since a doubtful thing cannot obligate, because then the law is not sufficiently promulgated, but only the promulgation is sufficiently doubtful, or the question is whether or not the law exists, behold a certain principle, not direct, but reflected, in which our proponents place moral certainty, whereby we may licitly follow the equally probable opinion.

41.—That we act with certain security, when our judgment adheres to a certain, albeit reflected, principle, is clear from the canons and from the common consensus of theologians. In chapter 2, de secund. nupt., it is said that if a man doubts the death of his first wife, he cannot demand conjugal duties, but he is bound to render them to the wife who requests them in good faith: "He shall not deny the due to the one who asks for it: but he shall know that it is not at all required of him," these are the words of the text. But how can a man use conjugal acts when doubting the death of his first

wife, and consequently, whether she is or is not his wife? It is possible, it is answered, because of a certain reflected principle, because when the wife is in good faith concerning the validity of the second marriage, she herself possesses a certain right to demand the duty, a right from which she cannot be deprived by the husband's doubt. Furthermore, it is proven from can. 4, Quid culpatur, caus. 23, q. 1, where St. Augustine teaches: "A just man, if, perhaps, he serves as a soldier even under a sacrilegious king, can rightly wage war at his command, if, while preserving the order of peace (instead of civil order), which is commanded to him, it is either certain that it is not against God's precept, or it is uncertain whether it is; so that perhaps he may make the king guilty of unjust command, but he shows the soldier to be innocent in obeying." Therefore, when it is doubtful whether war is just, a subject can licitly wage war at the command of the prince, and how? By a judgment joined to a certain, reflected principle, which in the doubt of the prince...

[*Latin ed. p. 28*]

TRACTATE I. ON CONSCIENCE: It possesses the right to be obeyed; therefore, the subordinate party, whenever he is not certain that a war is unjust, ought to obey; or, if he is not certain (contrary to God's precept) of this, the words of the text are to be considered. 42. Our adversaries themselves do not doubt this. Father John Lawrence Berti asserts that it is not permissible to follow an opinion that is equally probable but less safe. Let us, however, see how he proves this. He refutes two principles of the probabiliorists, which I also consider to be false. The probabiliorists claim that one can licitly follow a less safe, yet equally probable, opinion based on two principles, and that these principles render a speculative doubt certain in practice. The first of their principles is: He who acts on a probable opinion acts prudently. However, Father Berti says that we also say this principle, but it cannot make the use of a probable opinion licit, because when the contrary opinion is safer and equally probable, then we remain in doubt, and we do not have the necessary moral certainty for doing good; therefore, the one acting then does not act prudently, but most imprudently, because he uses nothing certain as his basis. The second principle is that when two opinions are equally probable, then a person can restrain judgment from the stricter opinion and follow the more lenient opinion, adhering to its probability. However, as Berti wisely says, this cannot even make us morally certain about the honesty of an action; for such a voluntary restraint of judgment, when coupled with invincible, or even affected, ignorance, is condemned, because a person would not abandon the doubt in practice, but would remain in the same doubt about the honesty of the action. Therefore, Berti rightly concludes that whenever no other foundation for the probability of a less safe opinion is available, we cannot use it; and I say that the falsity of these two principles adopted

by the probabiliorists has led many modern writers to reject our view, and has caused them to acquire many followers, without realizing that we do not refute these false principles, but use the indubitable principle that a doubtful law cannot impose a certain obligation. It would be different, as Berti adds, if, besides the probability of an opinion, there were some certain reflection of a principle that would make us certain in practice about the honesty of an action; because then our judgment would be made certain by the certainty of the reflected principle to which it adhered. He cites the example of a religious who, in doubt as to whether or not he can break his fast in order to devote himself to study, can licitly break it by the command of his superior, by which he is made certain that he can eat food without sin. He also cites the example of a possessor who, in doubt as to whether he justly possesses a certain property, can licitly continue in that possession, when a learned man will provide him with some reason for possessing it; for the possessor (according to the authority of St. Augustine, which Berti himself cites) is not bound to deprive himself of a thing legitimately possessed, unless he knows for certain that it is not his; for legitimate possession confers a right. Therefore, Father Berti generally concludes with these words: "Undoubtedly, a morally certain judgment can be formed in this way, by a reflection of the mind previously perplexed." Therefore, Berti does not doubt that a final, morally certain judgment can be rightly formed in practice, not only based on direct principles, but also on indirect and reflected principles. What makes our judgment certain is the principle that is evidently certain, as we have proven, and as we will demonstrate more and more, namely, that a doubtful law, because it is not sufficiently promulgated, cannot impose a certain obligation.

[*Latin ed. p. 29*]

CHAPTER III. ON PROBABLE CONSCIENCE, ETC. 17 43. – The same is affirmed by Berti, and followed by the authors of the book entitled *Moral Actions, Rules, etc., or a Question on Probable Opinion*, who, although they are adherents of rigid views, confirm the praised doctrine, saying: "What is uncertain in practice due to principles that are least certain, becomes entirely certain through a certain reflected principle." And they demonstrate this particularly with the example we have presented in n. 41, concerning the lord who, in good faith, requests the debt from his wife's property, and they add the following words: "In all these examples, it must be observed that reflected principles do not resolve the particular question, but rather leave it uncertain; only practice is certain, because reflected principles provide a certain rule for guiding practice in that doubt." And the same is written by Father Gonet for certain, in *Manual*, vol. 3, treatise 3, chapter 16, near the end. 44. – Let us now see what else is taught by St. Thomas, which will increase the credibility of our views. He teaches in *Opuscul. de veritate*, q. 17, art. 3, that no one is bound by

a precept unless through the knowledge of that precept. It is known that knowledge implies certain knowledge of something. And to understand that St. Thomas understands certain knowledge when he uses the word "knowledge," it is necessary to note the question he poses in the same place: "Does conscience bind?" And he answers in this way: "Just as the authority of a ruler binds in voluntary matters in the same way that a binding can affect the will, just as a bodily action binds material things. But a bodily action of an agent never induces necessity in something unless through contact with the action itself upon the thing in which it acts. Therefore, no one is bound by the authority of a lord unless that authority reaches the one to whom it is given. And it reaches him through knowledge. Therefore, no one is bound by a precept unless through the knowledge of that precept; just as, in the physical realm, an agent does not act unless through contact; so too, in the spiritual realm, it is through knowledge." This analogy of St. Thomas cannot be clearer or more convincing, in order to demonstrate that our principle, that an uncertain law cannot create a certain obligation, is true. St. Thomas says that knowledge of a precept is like a rope that binds the will; and just as a material thing is bound, it must be actively bound by the rope that binds it and forces it; so too, in order for the will of a person to be bound to perform an action or abstain from an action, it must have knowledge of the precept; otherwise, the person remains free. Therefore, when a person remains in doubt as to whether a precept exists or not, as happens when there are two equally probable opinions, then that person does not have knowledge of the precept; and therefore, he can follow the opinion that he prefers. 45. – St. Thomas declares the same elsewhere, namely in 1-2, q. 19, art. 10, where he asks: "Is it necessary for the human will to conform to the divine will in willing, in order for it to be good?" Then, in the same article 10, ad 1, he anticipates the objection: "It seems that the human will should not always conform to the divine will in willing, because we cannot will what we do not know... But we do not know what God wills in many things; therefore, the human will cannot conform to the divine will in willing." And he responds: "To the first point, it must be said that we can know, according to common reason, what the divine will is, because we know that God wills the good in all things. And therefore, whoever wills something for any reason that is good, has a will that is conformed to the divine will, as far as he knows."

[*Latin ed. p. 30*]

TRACTATE I. ON CONSCIENCE. "Then to the adoration." Therefore, whenever a person desires something for a good reason, he conforms himself to the divine will. Afterward, St. Thomas states what is most important for us: "But we do not know in particular what God wills; and in this respect, we are not bound to conform our will to the divine will." Therefore, we are not bound to conform ourselves to the divine will in particular,

and especially concerning precepts, whenever this divine will is not made known to us, as is more clearly stated by Father Gonet in these words: "A man is not bound to conform to the divine will" in a material sense, "unless when the divine will is manifested to him by a precept or prohibition." Gonet, in vol. 3, treatise 3, section 6, article 2, no. 37, at the end. Therefore, in the case of a precept of God, whether He commands or forbids a particular action, we are not bound to conform to the divine will unless the divine will has been manifested to us; otherwise, as Gerson says, when God does not manifest His will to us, He cannot obligate us. "It is necessary that there be a manifestation" of the order and will of God; for by His will alone, God cannot absolutely impose an obligation on creation." Gerson, on spiritual life, vol. 3, lecture 2, 46. The same is taught by St. Thomas, 2-2, question 104, article 4, where he asks: "Is obedience due to God in all things?" He answers affirmatively, but in the third place, he raises the objection to himself: "Whoever obeys God, conforms his will to the divine will" even in will; but we are not bound to conform our will to the divine will in all things, as has been shown above." (1-2, question 19, article 10, which is the passage we cited above), "therefore, a man is not bound to obey God in all things. And he answers: "To the third, question 104, it should be said that, although a man is not always bound to will what God wills, he is always bound to will what God wills him to will, and this is especially made known to man by divine precepts." Therefore, a man is bound to obey God and to conform himself to the divine will concerning precepts, not in all that God wills, but only in those things that God wills us to will. But how shall we know that God not only wills, but also wills us to will? St. Thomas says that we shall know when it is made known to us by divine precepts. Therefore, a doubtful knowledge of a precept is not sufficient to obligate us to observe it as the will of God, but a certain and manifest knowledge is necessary, which undoubtedly signifies the word "made known." 47. Hence, it is clear that St. Thomas was always consistent in teaching that the law must be certain in order to obligate us to observe it. He said that the promulgation of the natural law takes place when "God inserts it into the minds" of men, so that it may be naturally known. St. Thomas, 1-2, question 90, article 4, ad 1, said "to be known"; therefore, a man is bound to obey the law when he knows it by natural light, but not when he doubts it. Furthermore, he said that this knowledge of the law (which he called a "measure," because a man must measure his actions by it) must be the most certain, in order to obligate a man to observe the law: "The measure must be the most certain." 1-2, question 19, article 4, ad 3. He also said that just as a rope does not bind unless it is applied by contact, so no one is bound by a precept unless it is done through the knowledge of that precept. Opusc. de verit. question 17, article 3. He said that a man is bound to obey the divine will only when this divine will is manifested to him by precepts: "And to man, (what God wills) is especially made known

by divine precepts;" 2-2, question 104, article 4, ad 3.

[*Latin ed. p. 31*]

CHAPTER III. CONCERNING PROBABLE CONSCIENCE, etc. 19. Therefore, these statements of St. Thomas, namely, that a law must be known in order to obligate, that no one is bound by a precept unless he is aware of it; that the law must be certain in order to obligate; that we are not bound to conform to the divine will unless it is made known to us by precepts; can signify nothing other than that the law obligates only when it is known, only when it is certain, only when it is understood, and only when it is promulgated.

48. This teaching of St. Thomas is confirmed by many Saints and Doctors. St. Isidore says: "The law must be manifest." In the canons, it is said: "The law must be." St. Raymond wrote: "Do not be quick to judge mortal sins, unless you have certain scriptural proof." St. Antoninus asserts: "The question of whether an action is a mortal sin, unless there is express authority from Scripture, or from a canon of the Church, or from evident reason, is determined most dangerously." And he gives the reason, saying that he who determines that a certain action, about which there is prudent doubt as to whether it is mortal, builds to hell, that is, he exposes to the danger of damnation the one who performs that action. John Nyder also wrote, citing Bernard of Claramonte: "When there are opinions among the Masters, and the Church has not determined either side, one may hold what he wishes." Nyder in Consolatio, part 3, chapter 20. Thus also wrote Gabriel Briel in the year 1480, saying: "Nothing should be condemned as a mortal sin, unless there is evident reason, or manifest authority from Scripture." Lactantius wrote: "It is the folly of a man to wish to obey the precepts of those, when it is doubted whether they are true or false." Dominic Sotus, speaking of the law, says that, in order for it to obligate, it must be a rule for our actions, and it is necessary that a man consider it, that is, that he clearly know it: "He who uses a rule must consider it." Benedict XIV wrote in his notifications (notification 12): "Bonds should not be imposed, unless there is a manifest law that imposes them."

§ II. The objections of the adversaries are answered, and from the answers, our opinion will shine more clearly. 49. I do not wish to dilute the objections of the adversaries; indeed, I must dilute them; for from the answers, the certainty of our opinion will shine more and more. We begin with that objection which requires a longer response.

50. They object: 1. That it is not at all doubtful that even divine and natural laws require promulgation in order to obligate; they say, however, that natural laws have been promulgated from eternity, and have always had perfect force to bind man, even before he existed, because natural law is a certain participation of the eternal law, which some authors deduce from certain words of St. Thomas, from which St. Thomas himself responds for

us, as we shall see later. The Angelic Doctor (1-2, q. 91, a. 1, ad 2) says that the eternal law "has eternal promulgation."

[*Latin ed. p. 32*]

TRACTATE I. ON CONSCIENCE. "Regarding the promulgation by God." "However, I ask: Which promulgation of the divine law is it that obligates men, the promulgation from the side of God, or the promulgation from the side of creation?" St. Thomas, as we stated above in § 1, no. 39, teaches that the law does not have the power to bind unless it is applied to men through promulgation: "For the law to obtain its binding force, it must be applied to those who are to be governed by it; and this application is made by bringing it to their knowledge, which is done through promulgation." St. Thomas, 1-2, q. 90, art. 4. And in opposition (to the first objection), he says that even natural law requires promulgation, and this is done by the knowledge of the law that God implants in the minds of men through natural light: "It must be said that the promulgation of natural law is from the very fact that God has naturally impressed it upon the minds of men to be known." And the same Doctor teaches in the passage cited above by the opponent, where, after saying that eternal law has eternal promulgation from the side of God the promulgator, he immediately adds: "But from the side of the creature who hears or perceives, there cannot be eternal promulgation." (cit. a. 1. ad 2). Therefore, the promulgation that obligates occurs when the creature knows the precept through the light of reason, or hears it from the Church, or from wise men who teach it.

This is explained more clearly by St. Thomas in another passage, 1-2, q. 91, a. 2, where he says: "The law, since it is a rule and measure, can be in something in two ways: in one way as in the ruling and measuring principle; in another way as in the thing that is ruled and measured: because in as much as something participates in the rule, it is ruled thereby...." And this participation of eternal law in a rational creature is called natural law. Therefore, the Angelic Doctor asserts that since a certain law is a rule by which a man ought to regulate himself, it is considered in one way in the legislator who is ruling, and in another way in the man who is being ruled. Therefore, St. Thomas says that just as a man participates in natural law, which is his only rule, so he ought to regulate his actions. Before, therefore, he receives this light of natural law, he cannot be obligated, because he has not yet received the rule by which he can regulate himself. Therefore, eternal law is a rule for God the ruler, but for the man who is to be ruled, the rule is natural law, that is, the light that is manifested to him by natural reason.

Hence, theologians commonly, and rightly, say that eternal law is not properly a law, but rather something like a law, and, so to speak, is a law and rule for God himself; and if it is to be called promulgated, it is a certain

law promulgated by God to Himself. In this way, Du Vallius speaks, who writes that eternal law properly has the nature of a law when it is manifested to men; then he adds: "However, if it is considered from eternity, it must be said that it is not truly and properly a law, but only something that has the appearance of a law; then, because the nature of a law is to be promulgated to subjects, there were no subjects from eternity; then, because a law is essentially a certain practical rule, this rule could not be imposed upon the Word and the Holy Spirit, because they themselves are the rule and the very rectitude." (Du Vall. in 1-2, S. Thom. de leg. q. 2, p. 293). And so also say Montesinus and Jodochus Lorichius, Doctor of Louvain. Montesinus says that eternal law is not a law or a rule for us, but only for God Himself, promulgated to Himself: "I answer that such an eternal law is promulgated by God Himself from eternity, God is the law and rule for Himself: and thus we understand that God promulgates a law to Himself." (Montesin. D. 20, de leg.).

[*Latin ed. p. 33*]

CHAPTER III. CONCERNING PROBABLE CONSCIENCE, etc. 21 q. 4. n. 83. Lorichius, in his *Thesaurus novus utr. Theol. verb. Lex*, n. 6, writing concerning the same eternal law, says: "By this law, God orders all things to be known, and it is promulgated by Him from eternity; to men, however, it is promulgated when it becomes known to them."

53. Therefore, when it is asked whether this law obliges men, Du Vallius responds that it obliges when a man reaches the age of discretion, because at that time the law is promulgated to him by the light of nature; and it is sufficiently promulgated when each begins the years of discretion. 1. 2. de leg. q. 3. a. 3. And on page 296, he adds that eternal law is made manifest to us through natural law, which is its participation: "I say that it becomes known to us through other laws, since those laws are participations of it." Not differently does the esteemed Montesinus write in *disp. 20. de leg. q. 4. n. 85*: "Natural law is promulgated in each person when he first comes to the use of reason, and although at that time only the most common principles of natural law are promulgated, nevertheless, afterwards, the same law is gradually promulgated as far as other things are concerned."

Petrus de Lorca, of the Cîteaux order, does not dissent, but adds that knowledge of the law is essential and intrinsic, both to human laws and to natural laws. Lorca, in 1. 2. S. Thomæ d. 6. de leg.

Likewise, John Major wrote: "When anyone has reason, he has natural law." In 3. dist. 27. q. 2.

Thus also wrote Conrad Koellin, of the family of the blessed Dominic: "When (a man) comes to the use of reason, he is bound by those things which are of natural law." In 1. 2. q. 90. art. 4.

Likewise, P. Manstrius wrote in *theol. moral. d. 2. de leg. q. 2. a. 2. n. 34*:

"But this law of nature is made known to men, and it begins to obligate from that time when they receive the use of reason, and through such a law made known to them, they begin to discern between good and evil; for the use of reason is like the notification and manifestation of the very law of nature itself." And this is what Paul (Romans 7:9) intends with those words: "And I lived some time without the law. But when the commandment came, sin revived,."

Thus, also, John Granado (may he who reads forgive me if I bring so many texts of theologians saying the same thing, for it is very necessary to me that my adversaries and others be persuaded that all theologians have spoken uniformly against what my adversaries have objected to me); Granado writes: "It must be said that the law of nature consists in the dictate of reason.... Nor is there a lack of promulgation, because by the very fact that a man comes to the use of reason, he is able to discern between what is honest and what is evil." *Contr. 6. de leg. tract. 2. d. 4. n. 7*.

Likewise, Blasius de Benjumea wrote: "Since the law of nature must be proposed to the will, so that it may have the power of obligating, and since the dictate of reason can be pre-recognized and promulgated; this pre-recognition of the intellect notifies the obligation of doing or omitting some action, etc." *De leg. q. 2. art. 2. n. 220*.

54. From this, all the other theologians conclude that the eternal law, although it had the power of obligating in the first instance, nevertheless did not obligate anyone before it was promulgated and applied. This is made clear by what the Cardinal Gotti writes: "It follows that the eternal law, from eternity, in the second act, did not obligate anyone." And he adds that, although it has the power of obligating, nevertheless "it does not bind, because it has not yet been applied and promulgated." *Theol. tr. 5. de leg. q. 2. dub. 1. n. 13*. This very clear reason is given: "The measure in the second act does not...

[*Latin ed. p. 34*]

22. TRACTATE I. ON CONSCIENCE. "It is not applicable unless it is measured." Francis of Aravia writes: "Since eternal law does not obligate creatures unless through natural law or divine positive law, its promulgation is also sufficiently made known." In Volume 1, Question 96, Chapter 1, Section 5, page 525. Similarly, Honoratus Tournely states: "Because the eternal law was not truly binding before the existence of creatures, since nothing existed outside of it to which it could be binding, it is clear that the full reason of the law could only pertain to it when creatures existed, to whom the law was promulgated." Theological Lectures, Treatise on Law, Chapter 2, Conclusion 5. In the same manner, Father Collet wrote: "Because the eternal law was not binding before the existence of creatures, it is clear that the full reason of the law could only pertain to it when creatures existed, to whom it was made known." Volume 2, on Law, Chapter 2, page

17. From this, Joseph Rocaful, Prefect of Valencia, wrote: "As long as (the eternal law) is not promulgated in the manner of a law, it always pertains in the manner of a proposal to bring forth a law, and not in the manner of a law that has been enacted." Practice, etc., Book 2, Chapter 1. Father Berti wrote that the eternal law was not a law that obligated, but was prepared to obligate at the time it was promulgated to men: "We understand by promulgation nothing other than the already prepared promulgation of the eternal law; we say that the eternal law was instituted before secular times, but promulgated in the condition of times." He explained this with the words that "the eternal law was from eternity, and would only have force in the condition of created things"; so that it should have the force of obligating only when it had been promulgated to creatures.

55. Finally, all theologians agree that the eternal law was not a law that obligated until after it was promulgated: as Francis Sylvius writes: "The eternal law was from eternity a law materially, not formally, or under the aspect of a law actually obligating, because at that time there was not an actual and perfect promulgation." In Volume 1, Question 91, Article 1, Section 2. Father Gonet also agrees: "The eternal law could not have obligated creatures from eternity by reason of the lack of promulgation." In Clyp., Volume 3, Treatise 6, on Law, Section 2, Article 3. Lorichius writes: "To men (the eternal law) is promulgated when it becomes known to them." Thesaurus of Words, Law, number 6; and it is fitting here to repeat what Dominic Soto wrote: "No law has any force before promulgation; this conclusion does not allow any exception." For, since law is the rule of our actions, it cannot be a rule for us unless it is applied and made manifest to us: "But (the law) cannot be applied unless through its knowledge, for he who uses a rule must necessarily see it." Soto, on Justice, Book 1, Question 1, Article 4, Question 3, Article 2. Therefore, we conclude: All theologians, guided by St. Thomas, agree that the eternal law, although in its first act it had the power to obligate men, could not actually obligate in the second act until after it had been promulgated to men through the light of natural reason. Hence, it is necessary to repeat the teaching of John Gerson, who says: "It is necessary that there be a manifestation of the order and will of God; for through its mere order, or through its mere will alone, God cannot absolutely impose an obligation on creatures." On Spiritual Life, Volume 3, Lecture 2. And Francis Henno writes that natural law is not distinguished from eternal law; but he objects to himself: "Promulgation is essential to law, but natural law was only promulgated in time, therefore it only began to be properly law in time, and consequently it is distinguished from eternal law." He responds.

[*Latin ed. p. 35*]

CHAPTER III. CONCERNING PROBABLE CONSCIENCE, ETC. 23. "Indeed, the law of nature was able to obligate from eternity, although it did

not obligate, before it was promulgated in time through the dictate of reason." And the same is true of eternal law; therefore, just as eternal law was not obligating from eternity, but in time (that is, when it was manifested); so also is the law of nature. Let us proceed with the discussion of the law.

66. Objection 2: Does a man, therefore, not come into the world free, not subject and dependent on God? Indeed not. A man is born subject and dependent, and bound to obey all the commandments that God imposes upon him; but in order that these commandments may bind him, they must be applied to him by the actual promulgation of the commandment, which occurs when the commandment is manifested to him by the light of reason; but as long as the commandment is not manifested to him, the man possesses the freedom that God has given him, which, if it is certain, does not remain, unless it is bound by a certain commandment.

57. If a man were ever born bound by eternal law (as some of my opponents believe) before it was manifested to him, so that he could do no other actions than those that eternal law permitted, it would not have been necessary for God to have declared his commandments to man by the impression of natural light and written law; but he should have declared only those things that he permitted. The Lord could, I believe, have commanded that a man do nothing other than that which he expressly permitted; but he did not do so: "God made man from the beginning, and left him in the hand of his own counsel; he gave him commandments, and" his precepts: "If thou wilt keep the commandments and perform acceptable fidelity for ever, they shall preserve thee." Ecclesiasticus 15:14. Therefore, before this, God created man free, giving him freedom, according to what the Apostle wrote: "For he that hath determined, being steadfast in his heart, having no necessity, but having power of his enough will." 1 Corinthians 7:37. Afterward, he added commandments that he must observe, and from the observance of these commandments, the Lord established the salvation of man. As someone is bound by these commandments, says St. Thomas, as we have indicated above, he must have knowledge, that is, certain knowledge of them: "No one is bound by a commandment unless" through the knowledge of that commandment. De Veritate, Question 17, Article 3. For, as the law is a certain measure by which a man must regulate himself, the Saint says that it must be the most certain: "The measure must be the most certain." Prima Secundae, Question 19, Article 4, ad 3. Otherwise, if the measure were doubtful, no one could regulate himself well. This, St. Thomas has confirmed in many other places, saying that he who does not know the divine will is not bound to follow it: "But" in particular, we do enough know what God wants; and to that extent, we are not bound "to conform our will to the divine will." Prima Secundae, Question 19, Article 10. And speaking precisely of the obedience that we owe to divine commandments, the Saint says that we are not bound to obey them unless they have been manifested to us, as has been demonstrated in n. 47.

58. Objection 3: A man cannot lawfully expose himself to the danger of violating the law, when there are two equally probable opinions; then it is doubted whether the law exists; therefore, if at that time a man follows the less safe opinion, he is already exposing himself to the danger of violating the law. It is answered that a distinction must be made between the case in which the law is certain, and the case in which the law is doubtful; it is not sinful for him who exposes himself to the danger of violating the law; this is understood when the law is certain, and then that text is applicable: "A hard heart shall fear evil at the last." Ecclesiasticus 3:27. For in such a case, the law not only obliges to its observance, but also that we not expose ourselves to the probable danger of violating it. Otherwise, when the danger is only...

[*Latin ed. p. 36*]

TRACTATE I. ON CONSCIENCE. To violate a law that is doubtful, because, even if the law exists before God, the law that does not obligate would be violated; and a law that does not obligate cannot be called a law; for St. Thomas states in the *Summa Theologica*, 1-2, question 90, article 4, as we have said in § 1, number 39, that "a law, as a measure of a man's actions, must be applied to him by promulgation, and afterwards he adds: 'Therefore, in order that a law may have the power of obligating, which is its own proper characteristic, it must be applied by promulgation.'" Note that this is the proper characteristic of a law. Therefore, a law that does not have the power of obligating is neither a law, nor can it properly be called a law; and therefore, he who violates a law that is not yet manifest, as happens in the case of two equally probable opinions, can never be said to sin, because, although the law exists, he is not acting against a law that obligates, and therefore, he cannot be held guilty.

59. It is objected that there is a certain teaching of St. Thomas that says that ignorance of the law, when one is able and ought to know the law, does not excuse from guilt: "Ignorance is voluntary, it is said, when one is able and ought to know." St. Thomas, 1-2, question 6, article 8. From this, the adversaries infer that whenever a man "is able and ought to know a precept, even if he has never considered that precept, even in the slightest degree," his ignorance is vincible and culpable; thus speaks an anonymous modern author in the book entitled *Regula bonorum morum*. But how, I ask, can one know a precept when it has never occurred to him that such a precept could exist? What do the adversaries say? They say that a man, whenever he has a sound mind, unless it is morally impaired, always has at least a physical power to consider precepts, and therefore he is always guilty. However, St. Thomas does not speak in this way, but, together with St. Augustine and all the theologians, both probabilists and anti-probabilists, he teaches that whenever ignorance is voluntary, it excuses from sin. The Holy Doctor proves this in six hundred places. He says first that ignorance can be voluntary and culpable "either directly, as when someone deliber-

ately wants to remain ignorant of something in order to sin more freely; or indirectly, when someone neglects to learn something by which he would be kept from sin: such negligence makes ignorance voluntary, and sin." And immediately he adds: "But if ignorance is voluntary, either because it is invincible, or because it is of something that one is not required to know, such ignorance completely excuses from sin." St. Thomas, 1-2, question 76, article 3. Therefore, the Saint (let us repeat the very words): "If ignorance is voluntary, either because it is invincible, or because it is of something that one is not required to know, such ignorance completely excuses from sin," clearly declares that ignorance, even of those things that we are required to know, when it is invincible, completely excuses from sin, so that no doubt arises in the mind. The Angelic Doctor teaches this more clearly in *Quodlibet*, 8, article 15, writing: "Error of conscience sometimes has the power of excusing, when, namely, it proceeds from ignorance of something that one cannot know, or is not required to know; and in such a case, he says that 'even if the act is of itself mortal, if he intends to sin venially, he would sin venially, and consequently, if he intends not to sin at all, he certainly would not sin.'" Note this: One cannot know, or one is not required to know: Therefore, even in the case in which someone is required to know a precept, if he cannot know it, his ignorance will be invincible, and will excuse him from sin. And here, wisely, Father John de S. Thoma, a Dominican, among the ancients,

[*Latin ed. p. 37*]

CHAPTER III. CONCERNING PROBABLE CONSCIENCE, ETC.

A most celebrated argument observes that something can be known with certainty, not merely remotely, but closely and readily, so that an omission of the diligence due in seeking the truth is properly voluntary. The axiom is: "He who can, and is not bound, and does not do, sins; understand this to mean he who can closely and readily, not merely remotely and with difficulty, because (as we have said above) an omission, to be voluntary, must proceed from the very will, etc." St. Thomas, 1-2, question 5, distinction 1, 60.

From this, the Reverend Antoninus rightly wrote (p. 2, title 1, chapter 11, section 28) that invincible ignorance of natural law is given in those things which are proven by many arguments, and not clearly, to be contrary to precepts. Thus also think Habert, Theology, volume 3, on human acts, chapter 1, number 3, near the end; John Baptist Du Hamel, Theology, volume 4, on human acts, book 2, division 3, chapter 5, number 5, verse Ad legem; and Father John Lawrence Berti, on the discipline of theology, volume 2, book 21, chapter 10, where he writes that almost all Egidians, Thomists, and Sylvius, Herminier, and others commonly hold this opinion.

This is confirmed by St. Thomas, 1-2, question 110, article 1, saying: "Some things require a more subtle consideration of discipline." The same is held by Father Gonet, in his Theological Collection, volume 3, division 1, article 4, section 1, number 55, and elsewhere in his treatise on probability, near the end, where he says that the contrary opinion is singular, belonging to few, and improbable. The same is also held by Father Collet, in his Moral Compendium, volume 1, chapter 1, article 1, section 2, conclusion 4, page 23, and by Father Antoine, in his Moral Theology, part 1, treatise on sin, chapter 4, question 6, response 2, at the end, who reports that in Rome, in the year 1685, this article was published: "We admit no invincible ignorance of natural law in any man, while he acts here and now against natural law." I readily omit six hundred other texts, because I have written more fully on this in chapter 2 of the book I have published, *On the Use of a Probable Opinion*.

Now, let us pass over other texts of St. Thomas, in which he teaches that ignorance, when invincible, excuses from sin. In one place he says: "Ignorance which is entirely involuntary is not a sin. And this is what Augustine says: 'It is not imputed to you for guilt, if you are unwilling to know,' but if you neglect to know, volume 1, book 3, on free will, chapter 19, number 53. But by 'if you neglect to know,' he means that ignorance has what it takes to be a sin from a preceding negligence, which is nothing other than not applying the mind (understood voluntarily) to knowing those things which one ought to know." St. Thomas, on truth, question 3, article 7. And he repeats this a little later (article 8), saying that one sins only if he "refuses knowledge, so that he may not be hindered from sin which he loves, and thus ignorance is, in a way, commanded by the will." The Angelic Doctor, 1-2, question 19, article 6, says: "If, therefore, reason, or conscience, errs in a voluntary error, either directly, or through negligence, because it is an error about that which one is bound to know, then such an error does not excuse." Therefore, conversely, when the error is not willed, either directly, or indirectly through negligence, it certainly excuses from sin. Therefore, negligence is always required to make an error voluntary. Furthermore, the same St. Doctor, in his *Opuscula* on truth, question 17, article 3, after saying: "Nor is any ignorant person bound to perform a precept of God, unless insofar as he is bound to know the precept," he explains how that should be understood, saying in article 4: "Then a mistaken conscience does not suffice to absolve, when one sins in the very error." What does he mean by "when one sins in the very error"? Unless it means that one sins when...

[*Latin ed. p. 38*]

TRACTATE I. ON CONSCIENCE. An error is culpable when a person is aware of at least the obligation to know the precept, and neglects to learn it. The Saint repeats this in *Quodlibet* 8, no. 15: "Sometimes, indeed,

an error of conscience does not have the power to excuse, namely, when it itself is a sin." Therefore, when an error is not culpable, because it is involuntary, it excuses from sin; for then the action is only materially evil, which is not a sin before God, as writes Father Collet: "Moreover, a sin committed through invincible ignorance is not a sin except materially, and does not prevent eternal salvation from being attained." 62. Indeed, Father Concina writes in his *Moral Theology*, volume 2, book 2, on conscience, discourse 1, chapter 5, no. 36: "For one can, while performing an action that is materially evil, have the intention of pleasing God; such good actions we call meritorious, etc. A materially evil action, if it is not voluntary, does not transfer its malice to these actions." And what Saint John Chrysostom said with these words: "From a good intention, even what appears evil is good, because the good intention excuses the evil action." It is a common axiom among all: "Everyone is free to do what he pleases, unless it is forbidden by law," as is read in the text of the *Institutes* on personal law, § 1, and as the Angelic Doctor also teaches as an undoubted principle concerning even the laws of nature, saying: "That which is not prohibited by any law is considered licit." Saint Thomas, in *Summa Theologica*, IV, Sentences, d. 15, q. 2, art. 4, ad 2. 63. It is objected that ignorance is only invincible when we have no reason to doubt the honesty of the action; but how can such ignorance be called invincible when, even if there is an equally probable opinion favoring the law, there are already serious reasons to doubt that the action is unlawful? However, the answer is clear. We do not say that the person acting with a good opinion that is equally probable is not sinning because he does not know the law invincibly, but because in such a case he does not know invincibly the certainty of the law. And, given the principle that, as we have clearly demonstrated above, the law must be certain and manifest in order to obligate, whoever acts with a good opinion acts lawfully when the law is not certain or manifest. In this regard, Father Gonet writes to the more cautious Fagnan: "He who acts on a probable opinion, after having made sufficient effort to inquire into the truth, when no more probable opinion presents itself, does not act against his conscience, and therefore exposes himself to no danger of sin; because he is morally certain by his reflective judgment, saying: 'He who does everything in his power to inquire into the truth, and yet cannot attain it, is excused by the reason of invincible ignorance.' This principle is entirely certain, and is affirmed almost unanimously by all theologians." Gonet, *Manual*, volume 3, treatise 3, chapter 16, near the end. Therefore, Father Gonet states with these words a principle that is certain and common among theologians, that when the certainty of the law is unknown, when there is a risk of violating it, we can rightly use a less safe opinion, because such a doubtful law does not obligate. 64. Therefore, the crux of the matter lies in whether the principle that a doubtful law cannot obligate is certain. If it is certain, as we have clearly demonstrated above, and have proven with the authority of Saint

Thomas, whom the theologians commonly follow; and if there is invincible ignorance of the certainty of the law, then the person acting does not sin, without a doubt. But,

[*Latin ed. p. 39*]

CHAPTER III. CONCERNING PROBABLE CONSCIENCE, ETC. 27. As D. Thomas writes: "He who does or omits something in which he doubts whether it is a mortal sin, puts himself in danger; therefore, he sins mortally." In the 4th Sentences, Dist. 21, Q. 2, A. 2, ad 3. Therefore, D. Thomas then responds that a person sins mortally when he does or omits something with a practical doubt of sinning, in which he doubts that it is a sin. But this passage does not apply to someone who acts against a doubtful law that is not binding, as the same Angelic Doctor teaches: "No one is bound by a precept unless it is accompanied by knowledge of that precept," because in that case, he acts with a certain judgment of lawful action. 65. It is objected that we cannot use a benign opinion unless it is highly probable and morally certain (speaking broadly); otherwise (our modern probabiliorists say) the certainty of the honesty of an action cannot be attained. I reply: He who uses an equally probable opinion for the sake of freedom, based on the principle that a doubtful law is not binding, will not have direct certainty; however, he will have an indirect and reflected certainty that the action is honest, and in this way, he acts lawfully. But it is not to be doubted that someone acts lawfully with a certain reflected principle, as we have demonstrated in the following paragraph, number 70. However, I object to these modern probabiliorists that they themselves, even with a highly probable opinion (according to their own words), cannot, or find it difficult, to use a benign opinion with a safe conscience, but they must always follow the safer opinion, or the strictly certain judgment, as the strict rigorists wanted: and this is my argument. Our modern probabiliorists say, as we have indicated above, that we cannot put ourselves in danger of violating the law; however, it must be understood that a highly probable opinion, because it is within the realm of probability, does not exclude all prudent fear (which would be false), just as an absolutely morally certain judgment excludes all prudent fear, which is what the rigorists hold; but this proposition of theirs has been rejected by Alexander VIII: "It is not permissible to follow an opinion, even if it is highly probable." Therefore, if a highly probable opinion does not exclude all prudent fear, then the opinion contrary to the highly probable one is not merely probable, because a slight probability is not true probability, but only a certain false or empty species of probability, which cannot produce any prudent fear, but only some imprudent fear. And an imprudent fear is not a fear that can carry with it any danger of sin. The stricter rigorists commonly say that such imprudent fears are to be despised: it would be too great a folly to think that God commands us to avoid all imprudent and empty fears.

Therefore, unless we want to confuse a highly probable opinion with an absolutely certain opinion, we must say that the opinion contrary to the highly probable one is not merely probable, but dubiously probable, and has some prudent reason, although not entirely stable, to be considered probable: in what way, you ask, can he who holds that it is not permissible to put himself in danger of violating the law, intending to follow the highly probable opinion for the sake of freedom, induce in his mind, with a safe conscience, the firm belief that the opinion...

[*Latin ed. p. 40*]

28 TRACT. I. ON CONSCIENCE. Since it is not truly probable according to the law, and since one can act on the most probable opinion, why should one fear exposing oneself to the danger of violating the law? Where will one find such a balance, that one may be certain that the opinion which favors the law does not, in fact, possess all the marks of true probability, so as to arrive at a true probability? And in this way, can one act safely, and without the danger of violating the law? Therefore, I repeat what I said at the beginning, that a person cannot follow any opinion that is less safe, unless it is the most probable; for when there is already doubt as to whether the opinion that favors the law is itself probable, one will hardly be able to act with a safe conscience, unless one embraces strict caution, which is immune only from any fear, and especially from the danger of violating the law.

66. — Objection 7. Everyone knows that if, in a forest, there is an object that a person, who shoots an arrow at it, judges to be probably a man, he undoubtedly sins; therefore, if he sins who exposes the life of his neighbor to danger, how can he be excused from sin, who exposes the life of his own soul to danger, by casting himself into the probable danger of sinning? We answer; but we say it is surprising that this objection is always repeated by our opponents, even after we have answered it so many times. We answer again, that if an arrow is shot in a probable doubt as to whether the object is a man or a beast, it is not against a doubtful law, but against a certain law: for in that case, there is a certain law, not to expose the life of a neighbor to danger, who has a certain right not to be harmed. But in our case, not only is there no certain law forbidding us to expose ourselves to the danger of violating the law, but it is also certain (as we have indicated) that, since the law is doubtful, and consequently neither promulgated nor manifested, it has no power to bind; therefore, if it ever existed before God, he who violates it does not sin, because he violates a law that does not bind.

67. — Objection 8. To say that a certain law is doubtful, one would have to doubt whether such a law exists: but this, they say, cannot happen, because all laws, both divine and human, which we are to observe, certainly exist and have been promulgated. Therefore, they say, the doubt is not about the existence of the law, but about particular cases, that is, whether that

particular case is included in that universal law: therefore, when there are two equally probable opinions, we cannot say that the law is doubtful, but that a certain law does not extend to that case; but who would dare to assert this, when it is also probable that the opinion is in favor of the law? Thus writes Father Daniel Concina, in his Christian Theology.

68. — We answer, indeed, it is what Father Concina himself wrote in his Compendium of that Theology, volume 2, on laws, chapter 2, number 10, where he said that although the law is certain, the circumstances that occur may cause the law to bind in one case, and not in another; divine precepts are immutable, but sometimes a given circumstance does not obligate. Hence, we conclude, it is futile to say that all laws are certain, because, when the circumstances of the case change, in such cases those laws do not apply, or they become doubtful, and, as doubtful, they do not bind. Therefore, the aforementioned author repeats, according to your principle, that a doubtful law does not bind, you conclude that, in doubt as to whether the law extends or not to that case, it certainly does not extend? We answer that we do not say that the law certainly does not extend in that doubt, but that when there are two equally probable

[*Latin ed. p. 41*]

CHAPTER III. ON PROBABLE CONSCIENCES, ETC. 29. When it is not certain that a law applies to a particular case, then, with respect to that case, the law is doubtful, and as such, it does not obligate. Let us present an example for easier understanding. The law prohibits usury, but when there is equal probability that a certain contract is either usurious or not, then there is no certain law that prohibits it; therefore, with respect to such a contract, the law remains doubtful: with respect to usury, the law is certain that it is prohibited, but with respect to the contract itself, the law is doubtful. Therefore, it is truly probable that a particular case is not included in the law, this is the same as saying that it is doubtful whether the law extends to that case, which is the same as saying that the law is doubtful with respect to that case; and if the law is doubtful with respect to that case, then, consequently, it does not obligate with respect to that case.

69. It is objected that the canon, "In dubiis tutior pars eligenda est" (In doubtful matters, the safer course should be chosen), is contrary to our position. However, the answer is clear. We maintain that this rule applies only to practical doubts that remain in conscience and cannot be resolved, but not to speculative doubts, which are always resolved by a certain principle, because in that case, the person is not left in doubt, but rather leaves the doubt and has moral certainty. Therefore, the Doctors commonly say, along with St. Antoninus, Nyder, Tabiena, Isamberto, Father John Idelfonso, Vasquez (although he is praised here against us), Tannero, Navarro (whose doctrines are found in the aforementioned book,

Usus Moderati, etc., page 227, no. 7 and following), Soto, Medina, Sa, Valenza, Henriquez, Lorca, Vidal, Angles, Bardi, Salas, Father John from St. Thomas, Merolla, and countless others, that this rule applies only to practically doubtful cases, as is deduced from the very texts in which this rule is prescribed, and as I have shown all and each of these cases in the aforementioned book, *Usus Moderati*, etc., page 234, no. 11. As for speculative doubts, this rule is a matter of counsel, not of precept. How opportune it is that St. Antoninus, speaking of a certain contract that was probably licit, and probably illicit, according to the contrary opinions of the wise, writes: "They say: In doubtful matters, the safer way should be chosen." "But this is true with regard to merit, and to the greater good, and not with regard to the necessity of salvation in all doubtful matters." For the sake of brevity, I will omit here everything that I have written on this point in the book *Usus Moderati*, chapter 5, no. 2, page 221, and I will address the matter itself. Therefore, St. Antoninus says that in speculative doubts, which arise in the case of two equally probable opinions, the aforementioned rule is a matter of counsel, not of precept: "This is true with regard to merit, and not with regard to the necessity of salvation in all doubtful matters." Therefore, the opinion that the aforementioned rule applies in all doubts, even speculative ones, seems to me, according to what I have shown above, to be entirely improbable and unsustainable; for it is contrary to reason and to the common opinion of the theologians.

70. However, to put an end to this controversy, let us present the answer that silences all objections. What does the aforementioned canon say? It says: "In doubtful matters, the safer course should be chosen"; therefore, whenever conscience is in doubt (in dubiis), it cannot act without stimulation and without sin. But what prevents the canon from being valid when a person, with a certain reflection,

[*Latin ed. p. 42*]

30 TRACTATE I. ON CONSCIENCE. whether it forms a morally certain judgment for itself? Then it emerges from doubt, and from the limits of what the text discusses, and it cannot be said that it is in doubt. 71. — The rule of the canons is the truest and most just, but it is not the one that modernists want to consider safer, as they distort it, rightly or wrongly; but I say that they want the rule itself, according to their terms, not to say what it does. However, my opponent repeats that my argument would hold if the principle I adopted were certain; but since it is false, it does not hold. Therefore, I repeat, if my opponents do not clearly demonstrate that the principle I have adopted is false, namely, that a doubtful law cannot impose a certain obligation, because, as they say, there is not sufficient or certain promulgation, as D. Thomas and all the theologians say, then all their objections vanish. However, it seems to me morally impossible that they will ever be able to refute this principle of mine, which has been so

clearly proven, and I assert that they will never refute such a principle unless they refute the teachings of D. Thomas that I have cited. I said "unless they refute," because to want to interpret them arbitrarily and to twist them to another meaning, as they do, is the same as obscuring the light of the sun. 72. — Finally, they object to the decree of the Holy Roman Inquisition, issued in the year 1761, from which they argue that any probable opinion has been condemned. But it must be known that in the year 1760, a certain parish priest of the land of Avisi, in the diocese of Trent, published a pamphlet containing several propositions, all of which favored probabilism, some of which had gone beyond the bounds of what is just. I transcribed this pamphlet, along with all its propositions, in my book "Usus Moder." etc., chapter 5, page 282. The pamphlet was certainly condemned, but not all of its propositions were condemned; for some of them were just and innocent: and therefore, it was stated in the decree: "The aforementioned pamphlet, and the theses contained therein, are condemned, 'as containing propositions, some of which are respectively false, rash, and offensive to pious ears,' etc." Therefore, not all the propositions were condemned in particular, and separately from each other; for it was stated: "Some of which are respectively false, etc." And indeed, when I wrote about this, two primary consultants of the same Holy Roman Inquisition, namely, the Most Reverend Father Master Thomas Augustine Ricchino, Master of the Sacred Palace, and the Most Reverend Father Master Pius Thomas Schiara, from the secretariate of the Holy Roman Inquisition, wrote to me that the aforementioned pamphlet and theses had been condemned by the Holy Roman Inquisition, but not any particular proposition contained in those theses, and therefore, probabilism had not been condemned, neither with regard to what is equally probable, nor with regard to what favors freedom. I also wrote to the Most Eminent Cardinal Galli, then Major Penitentiary, and I asked him to obtain a response in my name from the mouth of the Supreme Pontiff himself. The aforementioned Most Eminent Lord, after speaking with the Pope, replied to me that not all the propositions of the pamphlet had been condemned, but only some of those contained in it, and that none of those propositions that are debated in Catholic schools, and which are defended by many Catholics, had been condemned. The aforementioned letters of the consultants, as well as of Cardinal Galli, are read in my book "Usus Moder.," page 233. With these things established, I do not believe that anything else needs to be said in response to this last objection to the decree of the Holy Roman Inquisition.

[*Latin ed. p. 43*]

CHAPTER III. ON PROBABLE CONCLUSIONS, ETC. 31 73.—In order to conclude this little work, I wish to transcribe here what the Bishop of St. Pontius, a learned prelate of France, wrote in one of his books in these times, saying that today, so much is exclaimed against relaxed moral theology,

when instead, it should be exclaimed against excessive rigorism, and on page 61, he adds these memorable words: "The Church rejoiced to see that the end had been set to the reign of relaxation in moral theology, but then it grieved to see that immoderate rigorism had taken its place. This is the second error that is being spread today." And indeed, in the past century, many abuses have occurred in presuming to consider many lax opinions as probable; therefore, the Church has condemned many opinions because they were unjustly called probable, such as propositions 27 and 40, condemned by Alexander VII, and 1, 3, 6, 35, 44, and 57, condemned by Innocent XI. All of these were condemned because they stated: "It is probable, etc." 74.—However, as the aforementioned prelate writes, this relaxation of opinion has now come to an end, and the same prelate adds: "The masters of relaxed moral theology have disappeared, but they have been replaced by new masters, whose pronouncements are even more intolerable, leading men to despair. They will be able to accomplish nothing other than to introduce corruption of morals. There are far more who excuse their bad behavior with excessive rigor, which is prevalent today, than those who try to excuse themselves under the pretext of relaxed morals." 75.—Everyone knows, and can know from what I have written in my last book on moral theology, how much I have condemned relaxed morals. I believe that my system has clearly demonstrated the probability of opinions, as many prelates, abbots, superiors of religious orders, and other most learned men believe, who have written to me, and that no one can contradict the opinions I have defended within certain limits; for the principle upon which my opinion is based, namely that a doubtful law does not obligate, because it has not been sufficiently promulgated, is said to be evident and certain. And I ask the reader to read the letters of such men, which are at the end of my book, *Usus moderati*, etc. 76.—I know that many, after reading my book, have abandoned a rigid opinion. Among others, Abbot D. Prosperus of L'Aquila, of the Congregation of Monte Vergine, who has published many learned works, wrote to me in this way: "I read your little book on the use of probable opinions with moderation, and it pleased me so much that I reread it. You have treated the demonstration of the argument with such outstanding skill that I have placed it above all others who treat the same argument, and I do not know what more could be desired in it. The principles upon which you have based your opinion are certain, and are accepted by both probabilists and rigorists. When the law is not certain, it cannot create a certain obligation. This you have demonstrated so correctly, with the authority of the canons, the Fathers, and the first-order theologians, that nothing has been demonstrated better. Therefore, when it is a question of equally probable opinions, I descend to your opinion, because anyone can lawfully follow it, even if it is less safe. I will not thank you for

such a gift, and for the notions which I have learned from your book."

[*Latin ed. p. 44*]

32 TRACT. I. ON CONSCIENCE. "I have acquired, and I shall commend with deserved praise in the article concerning probable opinions, which I have before me in the 3rd volume of the Theological Dictionary, where I shall present your dissertation for reading. And indeed, in the printed page of the aforementioned Dictionary, at the word "Probable" (which did not subsequently appear in print, for the reviser, being informed of a rigid system, did not wish it to be published), I read with my own eyes the following words: "I recommend for reading the learned dissertation of the Bishop of St. Agde of the Goths, D. Alphonsus de Ligorio, on the moderate use of probable opinions." He considers two things. First, whether it is permissible to follow a less probable opinion. Second, whether, when two contrary opinions are equally or almost equally probable, it is permissible to follow the less safe one. In the first case, he denies; in the second, he affirms: which he confirms with all kinds of arguments, and demonstrates that this is the opinion more favored by both ancient and modern Doctors. He brings the question, so clamorous in the schools, back to its origins, and after restoring it with its former splendor, he confirms it by the decision of learned theologians, in honor of the venerable Fathers of our Church. What is remarkable about this dissertation is the order of the doctrine, from which clarity emerges: and despite various subtleties and artifices of the moralists, by which the question seems complicated, it nevertheless treats it with such clarity that I have never read anything clearer on this subject, and its definitive decision seems to me to be correct. Thus I have expressed myself, because it is very dear to me that all men should make use of this dissertation, since it seems to me to be the cornerstone of this subject, in which other theologians have written such great and numerous volumes that anyone would be exhausted by trying to read them carefully." And it should be known that the aforementioned Abbot, as I have read in several of his other works, was entirely a follower of a rigid opinion.

77. — It is necessary that I now explain something about my own system, which must be explained; and it is this: that when there is doubt whether an opinion favorable to the law is equally probable, or only slightly probable, then the same principle applies as that which holds that a doubtful law does not obligate; for in such a case, the law itself does not cease to be strictly doubtful; for then, although there may be some greater probability in favor of the law, since there is doubt whether this greater probability exists or not, the preponderance will be so slight and minimal that nothing should be done, contrary to what is commonly admitted by the adversaries themselves, that a very small probability is to be considered as nothing. But it would be different if there were an obvious and certain excess, because then the opinion favorable to the law would certainly be and greatly more

probable; and it is established that when the opinion favorable to the law is certainly more probable, then it is also greatly more probable; therefore, as was said at the beginning, the law is then morally promulgated, and therefore it obligates, and it is undoubtedly to be observed.

78. — As for my own particular opinions, it is true that, in the first editions of my moral theology, guided by the authority of many authors, I admitted many opinions that were not sufficiently firm as probable; but after further consideration, I retracted or reformed them, as can be seen from the index of such opinions printed at the beginning of my moral theology, recently published; in which anyone can see how many propositions of Busembaum and other probabilists I have rejected; and on this matter, many have considered me to be a supporter of rigid rather than lenient opinions.

79. — Nevertheless, it was sufficiently probable to me that...

[*Latin ed. p. 45*]

ON THE NATURE OF LAW. 33. I approve of what is said by St. Antoninus, that those who insist on others following opinions that are too rigid build up to damnation, that is, they are the cause that many souls are condemned, who, believing that they ought to follow such opinions, are miserably condemned for not following them afterward. I bring this little work to a close. I have been unable to read for several months now, due to a certain infirmity, which will likely deprive me of sight in the near future. It is commonly said that all men speak in one way in life, and in another in death, because in death, those stimuli of conscience are felt which are not perceived, or, to speak more accurately, are not willing to be perceived in life. However, I do not experience any such stimuli of conscience before me, regarding what I have advocated concerning probable matters; indeed, it would be contrary to my religion to hold a different opinion regarding the instruction of others, by embracing the rigid system of some modern authors. I have said, according to the advice of St. John Chrysostom: "Be strict concerning your own life, but be kind concerning the lives of others." In can. Alligant. 26, q. 7, TRACTATE II, ON LAWS, CHAPTER I, ON THE NATURE OF LAW, 1, 2. Division of Law.—3. Conditions.—4 to 8. Promulgation.—9, 10. Acceptance.—11. If a law has not been accepted for a decade.—12 and 13. If the majority does not accept, etc. 1.—DEFINITION OF LAW: The right reason for acting. Law differs from a precept only in that law is given to a community, while a precept is given to individuals. Law is divided into eternal, natural, and positive. Eternal law is the reason of divine wisdom, which prescribes to men the rules of conduct for its observance. Natural law is the same as eternal law; it is called eternal insofar as it is given by God; insofar as it is considered as revealed to men by the light of nature, it is called natural law, to which all the precepts of the Decalogue belong. Positive law is that which is not dictated by nature,

but is in conformity with the law of nature, and it differs from it especially in this, that what is prohibited by the natural law is prohibited because it is evil; what is prohibited by the positive law is prohibited because it is prohibited. Positive law is further divided into divine and human. To the divine positive law belong all the precepts of the Old Testament, the ceremonial and judicial precepts: which ceased after the death of Jesus Christ, leaving only the moral precepts, which are called the precepts of the Decalogue. To it belong all the precepts of the New Testament concerning the sacraments. Human positive law is subdivided into the law of nations, which is called the law of nations, the ecclesiastical law, and the civil law. 2.—The law of nations is that which is established with the consent of all nations.

[*Latin ed. p. 46*]

34. TRACTATE II, ON LAWS. It is accepted that certain statements are considered laws, for example, "a law that war is just," "a law that a lord who does not have good governance is overthrown," and similar statements. Ecclesiastical law is that which is ordained by the Church for the spiritual governance of the Christian republic, and it is contained in the Decretals, the sixth Decretal, the Clementines, the Extravagantes, and all other pontifical bulls, which absolutely bind all the faithful. The canons collected in Gratian's Decretum, however, impose no obligation other than that which is inherent in themselves. Civil law, finally, is that which is enacted by princes for the good temporal governance of the people; and this varies according to the different places. Civil law includes the Digest, the Institutes, the Code, the Authentic, or the Novellae.

3. The conditions for a law to be binding are: 1. That it be honest, that is, conformable to religion. 2. That it be just, that is, that it not infringe upon the rights of the subjects. 3. That it be morally possible, that is, that it not be too difficult to observe, considering the circumstances of the places and times. 4. That it be useful to the public good, and that this good be noticeable. 5. That it be necessary, in order to prevent some evil that frequently occurs. 6. That it be manifest, that is, clear; as is stated in chapter Abbate, on the meaning of words, so that it does not contain any ambiguity, and as Saint Isidore says, canon 2, dist. 4. Otherwise, if a law were obscure, it could be interpreted differently, and since it could be the cause of error, it would be more harmful than beneficial.

4. Finally, for a law to be binding, it must be promulgated, as all the Doctors commonly agree, along with Saint Thomas (1) and Scotus (2), from canon In istis, distinct. 4, where it is read: "Laws are established when they are promulgated." Therefore, the Angelic Doctor rightly says, in the aforementioned passage, that a law is nothing other than an enacted ordinance. The reason is that, since a law is a common rule according to which the entire community is to live, it cannot be commonly observed unless it

has come to the knowledge of at least a significant part of the community (3).

5. Therefore, civil laws and the laws of princes, at least in some respects, even if they are supreme, must be promulgated in each province or metropolitan city. And these laws are not binding unless two months have passed since their promulgation, as stated in the Authentic, Ut factæ novæ, coll. 5.

6. It is debated here whether the laws of the Pope and other princes who are independent of the Emperor must be promulgated in each province in order to be binding. The first opinion affirms this, and this is held by many grave authors, such as Becanus, Natalis Alexander, P. Collet, the continuator of Tournely, Cabassutius; and it is considered probable by Sylvius, Anacletus, Roncaglia, and others, along with Angelo and Medina. Cajetan is also cited in support of this opinion; but Cajetan says nothing other than that canon law does not bind those who are ignorant of it. Lessius is also cited; but Lessius speaks of laws that invalidate contracts. Scotus is also cited; but Scotus speaks rather of laws that disable, or revoke privileges (4). The proponents of this first opinion are primarily based on the Authentic, Ut factæ novæ, mentioned above, stating that where there is no special provision in canon law, civil law must be observed, as deduced from (1) 1-2, q. 90, a. 4. (2) Scotus, dist. 3, q. 4, a. 2. (3) See l. 1, n. 96. (4) Decan de leg. qu. 5, n. 5. Natal. Alex. theol. l. 4, a. 3, reg. 25. Collet, t. 2, de leg., sect. 4, p. 14. Cabass. Theor. jur. l. 1, c. 4, a. 4. Sylv. t. 2, in 1-2, q. 96, ar. 4, quer. 11, concl. 5. Less. l. 2, c. 22, n. 98. Scotus, de just. l. 2, q. 1, a. 4, and see lib. 1, n. 96, v. 11. Nob.

[*Latin ed. p. 47*]

ON THE NATURE OF LAW. 35, from chapter 2 of *Nov. op.*, which reads as follows: "The statutes of the sacred canons are aided by the constitutions of the princes." Furthermore, it is said that it is necessary to obligate all the faithful of the Christian world to observe only those laws promulgated in Rome. But, according to this first opinion, the Bulls inserted in the Bullarium are to be excepted; for these are part of the body of the laws, and on this point all agree, as testified by Cardinal Petra (1). The second opinion, however, is much more common and probable, and it teaches that pontifical laws, and those of princes who are not subject to the emperor, obligate by the mere promulgation that is usually made in Rome, or in the prince's metropolis; thus Suarez, Bonacich, Laymann, Azorius, Castropal, Cardenas, Ferraris, and the theologians of Salamanca, Valencia, Navarre, Menoch, Vasquez, Pontius, Salas, etc. (2). The reason they give is this: It is not doubted that a law, in order to have binding force, must be promulgated, so that by promulgation it may come to the knowledge of the subjects; but concerning the manner of promulgation, this manner depends on the will and attention of the legislator. Hence, I have observed

that among all the Doctors, even those of opposing opinions, there is none who denies (as the theologians of Salamanca testify with certainty) that it is not necessary for a law, in order to be binding, to be published in every province, but that it is sufficient if it is promulgated in the legislator's court; and the theologians of Salamanca write that in the kingdoms of Spain, the royal laws are promulgated only in Madrid, because the king is bound to observe the laws of the Emperor. Similarly, many pontifical bulls, according to accepted custom, are promulgated only in Rome, in places designated for that purpose, and according to such constitutions, all ecclesiastical causes are then judged. On the other hand, the Apostolic See, in the case where it does not wish to obligate a law except after publication has been carried out in the provinces, expressly declares this, as it declared in the interdict imposed by the Fourth Lateran Council against doctors who attend to the sick before they have received the sacrament of Penance, as is stated in chapter "Concerning infirmity, of penance and remission." And likewise, this was expressly stated in the Council of Trent, session 24, chapter 1, concerning the invalidity of clandestine marriages. Given this, when the Pope determines that bulls are to be promulgated only in Rome, it is hardly likely that he does not intend to obligate the other provinces, but only the Roman province; for when the Pope wishes to bind only the Romans, he usually issues particular edicts (and these are often written in the Italian language); but when he issues general statutes for the entire Church, and solemnly promulgates them with binding clauses, it is to be presumed, without doubt, that he intends to obligate all the faithful, as soon as they receive knowledge of these bulls; which is easily accomplished, since from Rome they can reach other kingdoms; for almost all nations come to Rome, and all prelates (especially those from distant regions) have their agents there, who ordinarily inform them of recently promulgated constitutions. Furthermore, it is clearly deduced from chapter 1 of *Ad haec, de postul. prælat.* that "it is not necessary, when a constitution is solemnly issued," or publicly promulgated, to impress the knowledge of it on the ears of each individual "by a special mandate; but it is sufficient that it be brought to their attention."

(r) Cardinal Petra in *Præmia*, 2, 4, nos. 50 and 54.

(2) Suarez, *de leg.*, book 3, chapter 16, no. 8. Bonacich, *de leg.*, *D. r.*, question 1, paragraph 4, no. 16, *vers. Concedo, etc.* Laymann, *l. r.*, treatise 4, chapter 3, no. 4. Azorius, *p. r.*, book 5, chapter 3, *vers. In hæc quæst.* Castropal, *de leg.*, treatise 3, *D. r.*, paragraph 11, no. 4. Cardenas, *in r. Crisi D. g.*, book 20, article 12. Ferraris, *Bibl.*, volume 4, *verb. Lex*, article 2, no. 5. Salmanticenses, *tr.* 11, *de leg.*, chapter 1, from no. 86.

[*Latin ed. p. 48*]

36 TRACTATE III, ON LAWS. "Moreover, he who knows that a law has been solemnly enacted, or publicly promulgated, is bound to observe it."

Note the words "solemnly enacted" and "publicly promulgated." Therefore, anyone who has certain knowledge of a papal bull that has already been solemnly promulgated in Rome is indeed bound to observe it. This is deduced from chapter 1, §, concerning concessions of prebends, in 6, where it is stated: "No laws, or constitutions, or mandates bind anyone, unless they have come to the knowledge of those concerned, or unless after a time, within which they should not have failed to learn." Therefore, everyone must observe those laws of which they have knowledge, once they have been promulgated in a manner by which the legislator is able to promulgate them. And it is certainly possible for the Pope to bind all the faithful to observe his bulls through the mere fact of their promulgation in Rome, just as any prince (as we have seen above, and which is admitted by all) can bind his entire kingdom to his laws through the mere publication thereof in his court.

7. What further confirms our opinion are two clauses that are often appended to bulls promulgated in Rome, and affixed in customary places. One of these clauses states: "In order that these letters may more easily come to the knowledge of all, and that no one may allege ignorance of them, we wish them to be affixed to the doors, etc., and published, so that, being thus published, all and each of those to whom they pertain may be bound and affected by them, as if they had been personally notified." The other clause states: "We wish that copies of these letters, even printed ones, signed by the hand of a public notary, and sealed with the seal of a person in ecclesiastical dignity, should everywhere be received and observed in both legal and extra-legal matters, as if they had been exhibited or shown to each individual." These clauses clearly demonstrate the intention of the Pope to bind all the faithful to observe such statutes, independently of their publication in particular provinces. And Sylvius and Roncaglia, in the places cited above, although they admit the first opinion as probable, are certain that all bulls promulgated in Rome, with the aforementioned clauses, bind by themselves, without any further publication.

Furthermore, Roncaglia rightly states that from the words of such clauses, a strong argument can be adduced in favor of the probability of the first opinion with respect to bulls in which the aforementioned clauses are absent; for nothing is placed in laws in vain; those clauses would be utterly superfluous if all bulls promulgated in Rome, even without the aforementioned clauses, were to bind before any publication in the provinces. (Unless, that is, in some place there was a custom of accepting bulls promulgated in Rome in any way.) Sylvius, in the place cited above, letter d, verse Petes, asks whether bishops are bound to promulgate, or to take care that all papal laws are observed, which have already been promulgated in Rome? And he answers: "They are bound to take care that they are observed, when the Pope indicates that he wishes his law to be binding everywhere, even without any further promulgation there."

However, they are not bound to take care that they are promulgated, unless a papal mandate is directed to them, or unless they reasonably judge that promulgation in their dioceses is necessary. Nevertheless, those who have knowledge of a law appear to be bound by it, unless it has not been received, or unless the obligation has lapsed through disuse.

Furthermore, if the Pope does not indicate that another promulgation is necessary...

[*Latin ed. p. 49*]

ON THE NATURE OF LAWS. 37. It is argued that, unless a law is promulgated, or a command is directed to the Ordinary, it is doubtful whether those subject to the law are bound to promulgate it, or to ensure its observance, unless they foresee a notable benefit resulting from such promulgation in their dioceses. They may then interpret the Pope's intention to be that the law should be observed or promulgated in different provinces, when the Ordinaries consider it expedient and useful for their respective areas. Furthermore, it is likely that Suarez and Layman, along with Molina and Soto, hold that pontifical laws, which invalidate a contract of their nature, such as the Bull of Pope Pius V concerning lease contracts, or which remove jurisdiction, for example, in the sacrament of Penance; in these cases, it can be reasonably interpreted that the Pope does not intend them to have effect unless they have been promulgated in the dioceses; otherwise, they would be detrimental to many who would be unaware of them. The opposite is to be held concerning penalties imposed against improperly ordained clerics, and bishops who improperly ordain, as declared by Sixtus IV. Similarly, the opposite is to be held concerning laws that invalidate an act due to a lack of solemnity; because, after laws have had the power to bind, they are valid even with respect to those who are ignorant of them, as Sanchez and Layman say, with Navar and others.

8. It is doubted whether the two-month period required for imperial laws to become binding after their promulgation (as mentioned above in no. 5) also applies to pontifical laws, and those of other princes. Some deny this; but it is most likely that several learned doctors, such as Soto, Valentia, Sa, Sylvester, Bonac. Tapia, Menoch. Reginald. Granado, with Salmant, and others, affirm the contrary. The reason is that it is already required that the laws reach the knowledge of the community, as expressed in chapter 1 on concessions, in paragraph 6, where these words are read: "Law and command... bind no one... unless after a period within which they should enough not be ignored." Therefore, since no time is prescribed in the law, it is to be determined by prudent judgment, which has already been established in the aforementioned authentic document, so that no one may arbitrarily extend this period (3).

9. It is doubted whether a law must be accepted by the people in order to be binding. There is no doubt that those who do not accept just laws,

whether ecclesiastical or civil, are sinful, as stated in no. 28 of the decrees of Alexander VII: "The people do not sin even if, without any cause, they do not accept a law promulgated by a prince." However, it is doubtful whether a law that has not yet been accepted is binding. In this matter, civil laws must be distinguished from ecclesiastical laws. Regarding civil laws, some say that they are not binding unless they are accepted, because princes receive the power to make laws from the people; thus, Valentia, Becan, Navar, Azor, Bonac., and Salmant and Croix call this view probable (4). However, it is more likely that several others, such as Suarez, Pontius, Laym, Sylv, Dian, and others (6), defend the opposite, saying that a just law of a superior authority binds by itself. As for ecclesiastical laws, no one doubts that the Pope can bind the faithful independently of their acceptance, since it is certain (4) Suarez, de leg. l. 5. c. 33. n. 8. Laym. eod. tit. c. 2. n. 7. with Molina and Soto. — (5) Sanch. de matr. l. 5. D. 17. num. 9. D. 42. n. 2. Laym. in the place cited above. — (6) Ibid. v. Quæst. 2. and Salm. r. 11. de leg. c. 1. n. 91. and 92. — (4) Salm. de leg. c. 1. n. 101. — (5) Lib. 1. n. 591. — (6) Ap. Salm. de leg. c. 1. n. 102.

[*Latin ed. p. 50*]

38 TRACT II. ON LAWS. The Pope does not receive legislative power from the people, but from Jesus Christ, who said to him in the person of St. Peter: "Feed my sheep, etc." "Whatever you bind on earth shall be bound also in heaven." The same applies to the laws that bishops enact in their dioceses, who also receive such power from Jesus Christ, either directly or indirectly (as will be explained in n. 33, near the end). 10. Nevertheless, some Doctors, such as Valentini, Filliu, Covarrubias, Bonaventure, and others with Cabassol, argue that, for the sake of the smooth governance of the Church, the faithful are not obligated to observe laws that they have not accepted. However, we prefer the opinion of Suarez, Layman, Castro, Salamanca, etc., for the reason stated above, namely, that subjects are obligated to obey when the precept is just, and it should not be presumed that the superior intends to exempt anyone from the obligation of the precept in order to avoid disturbing the people. 11. Nevertheless, the aforementioned opinion is limited in the following ways: 1. As the Doctors commonly state, if a law has not been accepted for ten years; indeed, even if it has been accepted at one time, but then, for a continuous period of ten years, it has fallen into disuse, it is more likely that it is no longer binding, as Lessius, Azorín, Navarret, Castro, and others state, and it is not improbable that Benedict XIV, in *De Synodo*, book 13, chapter 5, paragraph 4, calls it so (contrary to others who believe that disuse must last for 40 years). For, as is already established for civil laws, no contrary provision is found for ecclesiastical laws, and the canons that seem to contradict this require a prescription of 40 years, but they speak of immovable property and of the real rights of the Church, but not of laws. "Indeed," says the cited Benedict

XIV, defending the opinion of Suarez, "a law enacted by the Roman Pontiff could not be abrogated except by custom lasting 100 years: only such a length of time is required to prescribe against the property and rights of the Church of Rome." Thus argue Lessius, Lugo, Panormo, and others cited by them. 12. Secondly, Suarez, Lessius, Castro, Tapia, Salamanca, and Busembach, etc., limit it by stating that if the majority and sound part of the people do not accept the law, then, even if disuse has not yet been prescribed, and those who initially did not accept the law have sinned, nevertheless, the others are not obligated to observe the law, presuming that the prince does not insist on obedience, nor does he punish those who transgress, intending not to obligate anyone to observe a precept that is not observed by the majority (1). It is said "others," because, as long as the law is not prescribed, those who have introduced a practice contrary to the law are not judged to be acting wrongly, as Castro rightly points out (2). 13. Thirdly, Salas, Castropal, and Suarez (contrary to others), limit it if the law is contrary to a custom that is in force, or if it is difficult to observe. But the Doctors of Salamanca reasonably admit this opinion only in the case where the circumstances were such that, if the prince had known them beforehand, he would not have enacted the law (3). If, however, the people have suffered for the revocation, and the prince does not insist on obedience, it is probably presumed that he does not intend to obligate anyone to observe the law, as several authors state (4). (1) See book 1, chapter 159, paragraph 3, limitations. (2) Tractate 3, Decretum 5, page 2, 2 reverse, at the end. (3) Book 1, chapter 159, paragraph 3, limitations. (4) Paragraph 159, question here.

[*Latin ed. p. 51*]

OF OBLIGATION, etc. CHAPTER II. OF THE OBLIGATION IMPLICIT IN THE LAW. 14, 15 and 16. The Obligation of Preceptive Laws. — 17. Whether the law can prescribe internal acts. — 18. Whether with a grave inconvenience. — 19. Whether the law can abolish a natural obligation. — 20 and 21. Whether we are bound to remove impediments. — 22 and 23. Doubts concerning laws. — 24 and 25. Of penal, privative, and disabling laws. — 26. Of those founded on a false presumption. — 27. Of conventional laws. — 28. Whether charity is necessary. — 29. Whether intention is required. — 30 and 31. Whether satisfaction can be made by several precepts, several acts, or a single act. — 32. Whether there can be several precepts on the same subject. 14. IT IS NECESSARY to distinguish between preceptive laws and penal laws. Penal laws are those which do not obligate to guilt, but only to the penalty imposed. Preceptive laws, on the other hand, obligate to guilt, and in conscience, whether they are ecclesiastical or civil, provided that these are not corrupted by canon law, as has been demonstrated in the work (1). Mixed laws, however, are those which obligate both to guilt and to penalty, but these are enumerated among

preceptive laws; therefore, we speak here of 1. preceptive laws; 2. penal laws; 3. the manner in which laws are to be observed. And I. speaking of a preceptive law, it obligates by reason of the matter being either grave or light. Nevertheless, the legislator, according to a more probable opinion, can obligate under a light penalty even in a matter of grave importance (2); but he cannot obligate under a light penalty in a matter of grave importance, unless a grave end is intended, or the transgression is committed out of scandal, or for the common detriment, or out of contempt. Contempt, however, in order to be grave, must be formal, which occurs when someone transgresses the law because he does not want to subject himself to it, and not when he violates it out of negligence, anger, or another affection of the mind, even if he frequently sins, as St. Thomas teaches (2. 2. q. 186. art. 9. ad 3.). 15. — The signs by which it can be determined whether a law obligates under a grave penalty are: 1. if the matter itself is grave; 2. if it is so interpreted by custom; 3. if the words themselves indicate it, e.g.: "We command under a grave penalty," or "in virtue of holy obedience," "absolutely," "irrevocably," and the like. However, the words simply imperative: "We will," "We command," "Do," "Abstain," and others of this kind, are ambiguous; therefore, it must be determined from the circumstances whether they are preceptive or hortatory. 4. If a grave penalty is added to the precept, e.g., perpetual exile, excommunication, irregularity, interdict from all use, total suspension, or removal from office, and a temporary deprivation of benefits. This, however, is understood if censures are issued as sentences, otherwise if they are to be imposed according to a probable opinion (3). 16. — It is doubted 1. whether, in the case where a law assigns a penalty, as it simultaneously prescribes, it obligates to guilt? Some deny this, if it is not expressly stated. Thus say Cajetan, Gomez, and others with Navarre (4), who says: "Human laws," even those prescribing, which establish a temporal penalty, in doubt, do not obligate to eternal punishment, as far as they are laws of him who establishes the penalty." And this is considered sufficiently probable by Valentini, Bonacich, Tapia, and others with P. Mazzotta, who also cites Filliucius for this. The reason they give is, first, that it is not presumed that the prince wants to obligate to guilt, when a penalty is sufficient to restrain the subjects; second, they say (1) L, 1. n. 106, v. Quæritur 5. — (2) Ibid. 1. n. 143. — (3) Ib. n. 144. — (4) Navar. Men. c. 23.

[*Latin ed. p. 52*]

40 TRACT II. ON LAWS. Thus, custom interprets these mixed laws. But others more plausibly assert that this is the difference (as has already been said) between a pure penal law and a mixed law, because the former obliges only to punishment, while the latter obliges to both; otherwise, the legislator would have added penalties in vain to the precept. Thus, Valentinus, Bonaventure, Taparelli, Salmanticensis, etc. (1). Note what is

said in Tract 10, no. 81, 17. — It is doubted 2. whether human laws can prescribe internal acts? Directly, they cannot, because only God can judge internal matters. However, they can indirectly, when an internal act has a necessary connection with an external act; for example, the Church, by prescribing annual confession, also prescribes sorrow and purpose, without which confession does not exist; by prescribing marriage, it prescribes consent; by assigning a parish to a cleric, it prescribes that he accept it with the intention of ascending to the priesthood within a year. As for external acts, even if hidden, there is no doubt that the law can universally prescribe or prohibit them, as it has imposed excommunication for hidden external heresy and irregularity for hidden homicide (2). 18. — It is doubted 3. whether, when someone is held to observe a human law with great damage or inconvenience? Generally, the Doctors deny this, except in two cases. 1. If the observance of the law is morally necessary for the public good, which is always to be preferred to a private temporal good. 2. If the transgression of the law would result in contempt for faith or the Church. Thus, generally, the Doctors say. 19. — It is doubted 4. whether a human law can remove a natural obligation, as is the law that invalidates testaments or contracts begun without solemnities; or the law that releases a family member from paying a loan? And we affirm this with greater probability, following Sanchon, Castrop, Salmanticensis, etc., because human law, for the common good, has obtained the power from God to transfer the dominion of things; although it may be contrary, it is still probable (3). 20. — It is asked 5. whether we are bound to remove proximate impediments that stand in the way of the execution of the law? This pertains to human law (otherwise, it pertains to natural law), and a distinction must be made. It is permissible to adduce a reason by which someone is excused from the obligation of the law; therefore, if today is a feast day, you may lawfully travel elsewhere where the feast day is not observed, and exempt yourself from hearing Mass. However, it is not permissible to adduce a reason that does not excuse, but only releases someone from the law. Therefore, he who undertakes a labor without a just cause, by which he becomes unable to fast, sins, and indeed not only if he undertakes that labor in order to be excused from fasting, but also if he undertakes it anticipating an exemption: because every law demands that no impediment to its observance be placed without a just cause. This is the opinion of St. Thomas (4) which we follow, along with Layman, Sanchon, Mazzola, and Castrop (who call it the common opinion), against Salmanticensis and others (5). 21. — But are excommunicated persons and those detained in prison bound to take care to be absolved or released from their bonds, so that they may attend Mass? Generally, it is denied, because such impediments are remote. But these also sin if they do not care to be freed, lest they be held to attend Mass. Indeed, Bonacich and Trullensis probably say that if they can easily free themselves, they would

not be excused, because we are bound to remove a slight impediment in order to satisfy a grave precept, even if it is a human one.

(1) Book 1, no. 147.

(2) Book 2, 4100.

(3) Book 3, no. 711, 757, and 927.

(4) 1-2, question 71, article 5.

(5) See Book 2, no. 1045 and 1046.

[*Latin ed. p. 53*]

ON THE OBLIGATION, etc. 41. It is undoubtedly the duty of those concerned to ensure that they are absolved, in order to fulfill the Paschal precept, which is indeed divine (2). 22.—It is doubted 6. whether there is an obligation to observe a law, if the obligation of that law is doubtful? The answer is negative. 1. When it is doubted whether a law exists or not, and diligent inquiry leaves the doubt unresolved (as stated in treatise 1, numbers 15 and 33 concerning conscience). 2. When it is doubted whether something is included or not in a law, or whether the obligation of that law has begun or not, as say Suar., Sanch., Castropal., and Salm. with Tapia, Villalob. (3). And the same Doctors cited say this when it is doubted whether the law has been promulgated or not (4). 23.—On the contrary, the law must be observed 1. when it is doubted whether it has been received, because when the existence of the law is certain, there is a presumption that it has been received, and also that it is, as it should be, accepted; this is the more probable opinion, according to Sanch., Castropal., and Salm., against others (5). 2. When it is doubted whether the legislator is a legitimate superior, who nevertheless is in possession of his jurisdiction. Sotus, Sanch., Tapia, Salas, Lopez, etc., except the case where the precept would be harmful or very burdensome (6). 3. When it is doubted whether the law is unjust, because in such a case, the superior is presumed to be in possession of the right to issue the precept (7). But the Doctors commonly limit this, if the precept would cause harm or a grave burden to the subjects (8). When it is doubted whether a law contains a precept or a warning, or whether it imposes a penalty, or even a fault, or a grave fault, or a minor fault, in these doubts, the milder interpretation must be followed (9). Conversely, when it is doubted whether something is permitted or prohibited, then, as stated, obedience must be given to the superior, as in treatise 1, number 18. 24.—Let us proceed to II. to purely penal laws, which obligate (as we have said) not to fault, but only to penalty: such as are the laws prohibiting the felling of trees, the removal of grain, and others of the same kind. It should be noted that spiritual penalties, such as censure, irregularity, incapacity, impediment to marriage, etc., when they are sentences of record and do not require extreme execution, are incurred immediately upon the commission of the offense, in conscience, before any

judgment of a judge, as is clear from chapter "Non dubium" concerning sentences of excommunication, and chapter "Significasti" concerning the homily. The same applies to penalties that impose incapacity, and to penalties that deprive one of a right acquired; provided that the guilty party is not required to suffer the penalty with his own infamy (10). 25. It is different if the penalty deprives one of an acquired right, e.g., a benefice, an election, etc., because in such cases, a sentence is always required, at least a declaratory sentence of guilt, even if the law states that the penalty is incurred by the very fact, as is deduced from chapter "Secundum" concerning heretics, number 6. And this is all the more true if the penalty is positive, namely, the restitution of something, or the renunciation of something, or the suffering of something else, according to laws that (e.g., for simony, or alienation of the benefits of a benefice) deprive people even of benefits previously obtained: for it is too harsh that anyone should be required to suffer penalties against himself. Only the case is excepted, if the penalty is one of incapacity, or is conditional, as is the penalty imposed on parish priests and canons by the Council of Trent (1) Lib. 3, n. 525, v. Ereommunicatus. — (2) See lib. 7, n. 161. — (3) Salm. de leg. c. 2, n. 110. — (4) See moral work, lib. 1, n. 97. — (5) Lib. v, ult. — (6) N. 98. — (7) N. 99. — (8) See lib. 4, n. 47, v. Limitant — (9) See Salm. de lege, lib. 2, n. 12. — (10) Lib. 1, n. 148 and 149.

[*Latin ed. p. 54*]

42. TREATISE II. ON LAWS. Those who are not residents are not to derive any benefit from their property; or, as the penalty imposed on simple religious who do not fulfill their canonical hours, they are not to receive any income (1). This type of penalty is applied to a cleric who, within a year of his ordination, neglects to begin his ministry, as is stated in chapter 6, title 26 of the De electione.

Here, the following questions arise: 1. Do penal laws founded on a false presumption obligate the conscience? It is necessary to distinguish between the presumption of fact, which is the presumed fact, and the presumption of law, which is the presumption of the law, which judges according to the presumed fact. Therefore, if the presumed fact is false, the law does not obligate; for example, if it is falsely proven in court that your animal caused damage, then to avoid scandal, you must pay, but you can secretly obtain compensation for yourself. The same applies to heirs who, due to negligence in the inventory, are penalized for paying the debts of the deceased beyond the hereditary assets, when in reality the debts exceed the inheritance. Conversely, it must be said that if the false presumption is only a false presumption of law; for example, if your animal certainly caused the damage, but the presumption is false that it happened through your fault; because then you are obliged to pay the penalty (this is understood after the sentence), because the purpose of the law is not only to punish, but also

to make people more diligent in avoiding damage to others (2).

27. It is asked whether conventional penalties imposed in contracts must be paid before judgment? Some affirm; others deny, as Navarrus, Lessius, Sanchez, Castrop, Vasquez, etc., and Salm. call this opinion equally probable, because whoever obligates himself intends to obligate himself according to the provisions of the laws, which do not obligate to penalties except after judgment (3).

28. We come to the third point, regarding the manner in which laws are to be observed. It should be noted that although it is necessary for a person to be in the state of grace in order for his works to be meritorious, it is not necessary to have charity in order to fulfill a precept, for example, fasting, canonical hours, the Holy Sacrifice, etc., as in the case of fulfilling a vow, or sacramental penance; for as St. Thomas teaches (4), along with others, the end of the precept does not fall under the precept: "For (these are the words of the Angelic Doctor) the end of the precept is not the same as that of which the precept is given." Therefore, one can fulfill the precept of fasting, even with an improper motive, such as avarice or empty glory (5).

29. It should be noted that it is necessary to have the intention of performing the prescribed work in order to fulfill a precept: therefore, he who attends the Holy Sacrifice without the intention of assisting, does not fulfill (6); but while the prescribed work is performed, it is not necessary to will to fulfill the precept. Therefore, if someone attends the Holy Sacrifice on a feast day, he fulfills the precept, even if he did not know it was a feast day (7); indeed, even if he knew it was a feast day, and did not intend to fulfill the precept, or if he fulfilled it only out of fear of the father or master, he would still fulfill the precept, because he fulfills it by performing the act itself, since such fulfillment does not depend on his own will, but on the will of a superior: therefore, when he fulfills, he cannot will not to fulfill; and he owes the debt.

(1) Book 3, no. 663; and book 4, no. 126.

(2) Book 1, no. 100, at the end, see question.

(3) No. 150.

(4) 1-2, question 100, articles 9 and 10.

(5) Book 1, no. 162, and book 3, no. 264.

(6) Book 1, no. 162, and book 3, no. 264.

(7) Book 1, no. 165.

[*Latin ed. p. 55*]

OF THOSE WHO CAN, etc. 43: It is permissible to fulfill an obligation to one who has already paid, as wisely say Suarez, Lessius, Tournely, Pontius, Sanch. Castrop, Coninch, Busemb, Salmant, and La Croix, and others (1). Conversely, it would be wrong if someone, having a vow, or a promise, or a penance to fulfill, were to perform an action without intending to satisfy

his obligation. However, this is understood when someone, conscious of the vow, etc., has dedicated his action to another end, and thus fulfills it; for everyone intends, from a general intention, to satisfy the obligation before those things which he has imposed upon himself by free will. Thus say Suarez, Azor, Lessius, Laym, Busemb, Roncaglia, etc. (2). 30. — Note 3: It is indeed possible to satisfy several different precepts at the same time with acts that are compatible: and thus, when hearing Holy Mass according to the precept, one can recite the canonical hours, or other prayers, to which he is bound by vow or penance (3). 31. — Note 4: A single act can satisfy several precepts that fall under the same subject matter for the same end (provided it is not a matter of justice). Therefore, on feasts, or on Sundays, it is sufficient to attend Holy Mass once. Thus, also, a subdeacon who is a beneficiary fulfills the obligation of his benefice and his order with a single recitation of the hours (4). And then, he who violates two precepts commits only one sin. Otherwise, if the precepts have different motivations. Therefore, he who is bound to fast by vow, or by penance prescribed by a confessor, does not satisfy the fast by fasting on the eve (5), unless the penance was prescribed for the month in which the eve falls (6). 32. — Note 5: He who, in a single act, violates different precepts enacted by different legislators on the same subject, commits only one sin, if the legislators had the same motivation. He who commits homicide, which is prohibited under the penalty of excommunication, also by the bishop, commits only one sin, because both God and the bishop had only one motivation of justice: thus, likewise, a priest who is a beneficiary, omitting his office (whenever he wishes to restore the fruits), commits only one sin against religion; otherwise, if the motivations are different. Hence, he who breaks the fast on the eve, which was also promised by a vow, commits a double sin; likewise, he who kills a cleric sins doubly, against justice by divine precept, and against religion by the precept of the Church, which, for the sake of reverence due to them, prohibits injury being done to her ministers (7); for the general rule is that when the Church establishes something, she places it under the power of that authority, for the reason for which she commands that thing (8). CHAPTER III. OF THOSE WHO CAN ENACT LEGES. 33. Who can enact civil laws, and who can enact ecclesiastical laws. — 34 and 35. Concerning Decretals, or pontifical responses, and concerning declarations of the Holy Congregation, and decisions of the Roman Rota. 33. — Civil laws can only be enacted by those who have supreme authority, such as kings, republics, and other superiors, who are not 1) Book 2, no. 164, and more fully, Book 4, no. 116. — (2) Book 1, no. 165, and Book 3, no. 172, see Question 11, add Salm. de leg. c. 2, no. 139. — (3) Book 1, no. 166, and Book 4, no. 176, see Around in the end. — (4) Book 1, no. 166, with Salm. c. 2, no. 109. — (5) Book 1, no. 167, to 2, with Salm. de leg. c. 2, no. 154. — (6) See Salm. loc. cit. — (7) Book 1, no. 167, and more fully, Book 5, no. 33.

— (8) Ibid. see To acknowledge.

[*Latin ed. p. 56*]

TRACTATE II. ON LAWS. Those who possess authority can enact laws. All other universities can only enact statutes that bind their citizens by contract; but even some precepts, which the prince can revoke temporarily. These civil laws, which concern good morals (as we have said), already obligate in conscience, as is shown in the Moral Work, whenever they have not been expressly repealed by canon law, which requires them to be observed, chap. 1, on new laws, and chap. "Super," on Privileges (1). See the aforementioned point 16, concerning mixed laws. Ecclesiastical laws, however, can be made 1. by the Pope for the whole world; 2. by general councils, provided they are convened at the command of the Pope and confirmed by his authority (in our Moral Work, we have written a lengthy dissertation in which we show that all definitions made by the Pope speaking from the chair, or by the Church teaching concerning faith and morals, are infallible; and that his power is above that of councils, which derive all their force and infallibility from his confirmation: see book 1, no. 110). 3. By national or provincial councils, namely, those composed of bishops with their archbishops, or by synods of bishops with their priests; 4. By bishops for their own diocese: chap. on major matters, etc., and chap. 2, on constitutions, in 6. but with the addition of the council of their diocese, as from chap. "Quanto," on those made by prelates. As for whether bishops have this power immediately, some say from the Pope; others from God, with subordination to the Pope (2): most, as Sotus, Palearius, Abulensis, Cabassus, Sanchius, Pontius, Covarrus, Hurtus, Perez, and Henricus, hold that bishops enjoy as much power in their own diocese as the Pope in the whole Church, provided that it is not concerning matters pertaining to the universal Church, such as definitions concerning faith, or matters of great importance, e.g., impediments to marriage, and the like (3). Chapters of cathedrals cannot enact laws (unless concerning their own chapters) while the bishop is alive; they can do so when the see is vacant (4).

34. It is doubted here by I. whether papal letters, responses, or declarations not included in the body of the law, have the force of obligating? It is answered affirmatively, provided they are authentic, as is declared from canon Si Romanorum 1 dist. 19, provided they are sufficiently promulgated, as Bonacina says (5), stating that an interpretation of the law made authoritatively does not have the force of law, unless it is promulgated; because promulgation is the reason for the law; he cites Salas, and others; and then in no. 12, he adds: "Therefore, it may be inferred that papal letters do not have the force of law," unless they are published in the manner in which laws are usually published. The same is said by Castropalus (6), saying: "However, this declaration (papal) must be published" with the solemnity with which a law is published, otherwise it will not be authen-

tic, and will not have the obligation of law, but will only be a doctrinal declaration." The same is taught by Suarez; for although previously in the work on Laws (7) he says: "Usually, letters or responses from the Pope are rather declaratory, and not constitutive, and have the force of law obligating to hold that interpretation, or to observe the ancient law according to that interpretation;" nevertheless, he then adds (8): "In order for the interpretation to be authentic, it must have the conditions of a law, such as being just (note), sufficiently promulgated, etc. Therefore, it follows that this interpretative law is subject to doubt, so that other interpretations are not-"

(1) See I. 1, no. 106, at the end.

(2) Ibid. 1, no. 104.

(3) See book 6, no. 980, v. Sed dubit. 1.

(4) Book 1, no. 104, v. Chapters.

(5) Bon. tom. 2, on laws, D. 1, q. 1, p. 4, no. 11 and 12.

(6) Castrop. tr. 3, on laws, D. 4, p. 5, 2 1, no. 2.

(7) Suarez, on laws, 1, 4, c. 14, no. 6.

(8) Ibid. 1, 6, c. 1, no. 3.

[*Latin ed. p. 57*]

ON THOSE WHO CAN, etc. 45 "They must cease." This is sufficiently confirmed (namely, these pontifical declarations or responses) by the fact that they require promulgation in order to be binding, as stated in the aforementioned canon. In the Roman records, where the decree of Pope Leo is cited and confirmed, it is said: "Lest anything should be omitted, or anything be thought to have been overlooked by us, we command that all the decrees and constitutions of the same memory of Innocent, as well as those of all our predecessors, which have been promulgated concerning ecclesiastical orders and canons, be diligently observed by you." Note that what has been promulgated. However, Roncaglia rightly points out (1) that not only pontifical constitutions that have been solemnly promulgated acquire the force of law, but also all other pronouncements that, by custom and the consent of the universal Church, have been considered for centuries as sufficiently promulgated and authentic.

II. Is it doubted whether the declarations of the sacred congregations have the force of law? First, it must be understood that the decrees of the Sacred Congregation of Rites are to be considered as the oracles of the Pope, as stated in the bull 74 of Pius V, who also wished that the pontifical chapel be subject to the mandates of this congregation. However, Turrinus, in Merati (2), says that, although the declarations of this congregation are to be considered only as the responses of most wise men, they are nevertheless to be preferred to the opinions of lesser doctors. And rightly so, because since new rites cannot be introduced unless approved by the Church, the

opinion of those who are most versed in rites, and who have the power to interpret the old, to change them, and to establish new ones, must be preferred to the opinions of those who have no power in these matters, nor possess such expertise.

As for the declarations of other congregations, there is no doubt that, in particular cases for which they are intended, they are binding as laws. However, many doctors probably affirm that, provided they are accompanied by the seal, the signature of the Cardinal Prefect, and the consultation of the Pope, as prescribed by Pius V in bull 74, they are binding. However, others also probably say: "Declarations, although of the highest authority, nevertheless do not bind unless they are issued by order of the Pope, and are published for the entire Church, so that the Pope declares that he wishes them to be observed by all the faithful"; so say Sanch, Tournèly, Bonac, Vasquez, Cardenas, Terillo, Vega, Villalobos, Tapia, Lezana, Salmant, and Mazzotta. The reason is (as we will say in the interpretation, nos. 73 and 74), that whenever declarations are made by someone other than the proper legislator, they are new laws, which require new and solemn promulgation, according to what was said in treatise 2, no. 5. This promulgation does not occur through the declarations of the SS. congregations (3).

35. The decisions of the Roman Rota are endowed with so little authority that they are considered as laws. If, however, the regulations of the chancery are binding everywhere, Lessius, Valerius, Diana, and others deny this, for the same reason, because they are not published; therefore, they are said to be valid only for the guidance of the Roman curia. But La Croix, Gomez, Azorius, and others affirm, because of contrary practice, at least with regard to those regulations whose subject matter is common, or not limited solely to the Roman curia (4).

(1) Ronc. de leg. qu. 2. c. 2. q. 7. resp. II.

(2) Mer. t. r. p. 5. tit. 21. ad III. v. Hujus.

(3) Lib. r. n. 306. v. Secunda.

(4) See La Croix. l. 1. n. 575.

[*Latin ed. p. 58*]

46. TRACTATE II. ON LAWS. CHAPTER IV. ON THOSE BOUND BY LAWS. 36. Who is bound by the Laws? — 37. Are children? — 38. Are legislators? — 39 and 40. Are foreigners? — 41. If foreigners die within a short time? — 42. Can a bishop dispense with the laws for foreigners regarding vows, fasts, etc.?

36. — IT IS TO BE NOTED that some are not bound by human laws, of which we are speaking here; and these are the infidels, children, and those of unsound mind. Others, however, are excused from the laws, such as the drunk, the sleeping, and the ignorant. Therefore, it is not permissible to induce the former to transgress the law, whereas the latter are rightly

excused. But it is always a sin to induce anyone to violate the natural law (1).

37. — St. Antoninus and others say that children are not immediately subject to ecclesiastical laws after the use of reason, but at least after the age of ten. This opinion is rightly rejected by others. Indeed, if a very young child, in some rare case, even before the completion of the seventh year and the perfect use of reason, committed a sin, that child would also very probably be bound by the law, as many believe, although I do not consider the contrary opinion to be entirely improbable, because St. Thomas says (2) that laws do not concern rare cases, but those that commonly occur: "The legislator considers" what commonly and in many cases happens. However, a child of this age, if he has committed a mortal sin, is undoubtedly bound by the precept of annual confession; for in chapter "All of both sexes," concerning penance and remission, it expressly obligates anyone who has reached the age of discretion (3). If, however, there is doubt as to whether a child has reached the perfect use of reason or not: before the seventh year, it is not presumed that he has; after that year, it is presumed that he has (3).

38. — Legislators are also bound by the laws, at least in a minor degree, as they should be an example to those subject to them; and in a greater degree, if the matter concerns taxation, price, or the value of a contract (4).

39. — Regarding foreigners, several things must be noted: 1. A foreigner is bound by the common law of the place, provided that the region is Catholic, and there is no contrary custom there (5); but not by the local laws of his own country, as long as he is absent from it, even if he left with the intention of being exempt from them. The same would apply if he were to reside in an exempt place, even within his own diocese. For this reason, monasteries and churches of regular canons are probably exempt from the jurisdiction of the bishop, where a sufficient number remains, as Sayrus, Avila, Henriquez, and Salmant say, along with Candido, and Diana, in Nav. Concil. Trident. sess. 14, cap. 5, de ref., which calls both persons and places of the regular clergy exempt (6).

40. — Note 2. that a foreigner is bound by the laws of the place where he resides, even if he has only contracted a quasi-domicile there, according to the common opinion, although some authors say otherwise, who require a true domicile. It should be noted that a person is said to have a true domicile when he has the intention of permanently residing somewhere, and this intention is presumed when he transfers a greater part of his property there, or builds or buys a house there, or expressly declares that he has this intention, or resides there (1).

(1) Lib. 1, n. 155.

(2) 2-2, q. 147, a. 4.

(3) See lib. 3, n. 270.

(4) Lib. 1, n. 184.
(5) Lib. 1, n. 136.
(6) lb. n. 157.

[*Latin ed. p. 59*]

QUE CAUSÆ EXCUSENT, etc. 47. It is established that a person is considered to have established domicile if, for ten years, they show no indication of intending to leave. A person is considered to have established domicile when they reside in a town, either for the greater part of the year or for a notable period of time (1). 41. It is debated among Doctors whether a person who is temporarily present in a foreign land is bound by the laws of that place. The first opinion affirms this, citing Pontius, Covarubias, Salas, and Tapia, and Sanchinius and Salmantinus consider it probable, because (as they themselves say) it is conducive to public peace and to avoid scandal, so that everyone may observe the laws of the place where they are found. However, more Doctors say that a mere passing through a place is not sufficient to subject a person to the laws of that place; some say that even a single day's stay is sufficient; others require a longer period. But Father Suarez discusses this matter more thoroughly, distinguishing as follows: If a person arrives in a place as part of their journey, then that person is bound by all the laws of that place; but if they are merely passing through, they are not bound by positive precepts, such as fasting and attending Mass, because positive precepts only bind residents, not those who are merely passing through; but they are bound by negative precepts, which are always binding, and which apply continuously throughout the day. This first opinion is reasonably probable, but it is more common and more probable that a person who is not considered to have established domicile, by staying there for a longer period or for a notable part of the year, is not bound by the laws of that place, because the law only binds those who are subject to it, and those who stay in a place for only a short time are not considered to be subject. Provided, however, that it is not a law concerning common right, or one that concerns the validity of contracts (2). 42. It is debated whether the bishop of a diocese can grant dispensations to foreigners regarding vows, oaths, fasts, and holy days related to servile works. The first opinion affirms this, citing Pontius, Tannerus, and de Januarii (and Castropalus calls it probable), for the reason mentioned above, namely that a person who is temporarily present in a place, even for a short time (provided they arrive there as part of their journey), is subject to the bishop of that diocese, and if this reason is probable, as we have said, then this opinion is also probable. But, as has been said, the opinion that the bishop cannot grant dispensations regarding vows, except to those foreigners who have established domicile (3), is more common and more probable.

CHAPTER V. WHAT CAUSES EXCUSE FROM A VIOLATION OF A

PRECEPT. 43. Ignorance excuses. — 44. Fear. — 45. Impotence. 43. Ignorance excuses (1), if it is invincible, even in matters of natural law; however, this applies only to conclusions that are mediated, as explained above concerning conscience, treatise 1, paragraph 5. Otherwise, if it is vincible, that is, when a person can and ought to know the truth, and furthermore, they are aware of the obligation to resolve the doubt, and they neglect to do so; this is the common opinion of St. Antoninus, Suarez, Silvius, Gerson, Navarrus, Sanchius, Castropalus, etc., based on St. Thomas, *De Veritate*, question 15, article 4, ad 10; and *Summa Theologica*, 1-2, question 76, article 3 (4). 44. Fear excuses (2), but a distinction must be made between positive and natural precepts. Fear of a serious evil excuses even from divine positive precepts.

(1) Cit. n. 156.

(2) Lib. 3, n. 552. v. An autem; et l. 1. n. 156, dubit. 2.

(3) Lib. 1. n. 158.

(4) N. 7, ad 11; et n. 168.

[*Latin ed. p. 60*]

48. TRACTATE II. ON LAWS. The observance of laws is not always necessary to avoid common scandal, or to maintain obedience to the Church; for example, if someone is forced to violate a fast out of contempt for the Catholic religion, then we are bound to obey the precept, even at the cost of life. However, natural laws, if affirmative, are not always to be observed; therefore, when it involves the loss of life, we are not bound to return a deposit, nor to fulfill a vow, etc. But negative laws, such as "do not commit adultery," "do not blaspheme," never admit of an excuse. And if, from a negative precept, such as "do not kill," "do not steal," an excuse is sometimes made by fear (since it is permissible to kill an unjust aggressor in order to protect life, and to take another's property if there is no other way to avoid a grave infamy), then we say that the precept ceases in that case. And it is better to say the same about affirmative precepts, so that the distinction made by some is not introduced, namely, that natural and affirmative precepts always obligate, but not always; while negative precepts always and without exception obligate (1). 45.—An excuse is also made by 3. impotence. But if the entire precept cannot be observed, should the possible part be observed? This distinction must be used. If the precept admits of a convenient division, so that in each part of it the end of the precept is also preserved, then, even if the entire precept cannot be observed, the possible part must be fulfilled; for example, if you cannot recite all the canonical hours, you must recite the part that you can, and the opposite proposition has already been refuted by Janus, XI, and 54; likewise, during times of fasting, if you have been dispensed from eating meat, you must still observe one meal, as declared by Benedict XIV in the constitution: *Ambigimus* (2). It proceeds differently if the reason of the precept is not preserved in part;

therefore, if you are bound by a vow to travel to Rome, and you cannot get there, there is no obligation to begin the journey (3). Dispensation, epikeia, and contrary custom also excuse from the law, but these will be discussed separately in the following chapters.

CHAPTER VI. ON DISPENSATION.

46. Is a just cause always required for a dispensation?

47. If it is obtained secretly, etc.

48. It can also be requested by a third party.

49. Tacit dispensation.

50. The cause of dispensation.

51. In doubt, is dispensation needed?

52. Is the superior bound to grant dispensation?

53. Dispensation granted in good faith or bad faith, but without a cause.

54. Granted out of fear.

46.—A dispensation from the legislator, or from one who has similar power, excuses from the law, provided that a just cause is present; otherwise, he who grants the dispensation sins; but only venially (if he is the primary superior), as is probably said by Sanch., Castropal., Laym., Salm., Pontius, etc. And in doubt whether the cause is just or not, he is immune from all guilt, as rightly said by Sanch. and Salmant. with Granada and Diana (whatever Bonac. may say). But he who obtains such a dispensation, namely, without a cause, from a superior, probably does not sin while using it, according to Suar., Salmant., Castrop., Pontius, etc.

47.—Note 1. that when what is presented as a dispensation is either false or deceptive (namely, when something false is presented, or (1) *Lib. r. n. 178,* — (2) See *l. 3. n. 1013,* — (3) *Lib. r. n. 177.*

[*Latin ed. p. 61*]

REGARDING DISPENSATIONS. 49. It is true that silence can conceal the truth; however, a dispensation is invalid when silence is maintained regarding a matter that should have been brought to the attention of the ecclesiastical authority; or when the final, or motivating (but not impulsive) reason given is false. However, Sanchez, Pontius, Castropal, Salmant, and others state that a dispensation is valid when the reason given is doubtful, whether it is false or impulsive; for the laws favor the validity of an action in cases of doubt. L. Concerning doubtful matters. And these Doctors also state that if many reasons are given, some true and some false, but each of them is a sufficient reason for obtaining a dispensation (1). 48.—Note 2. A dispensation for one person, even if unknown and unasked for, can be obtained by others. However, it must be noted that those obtained from the Sacred Penitentiary must be requested either by the penitent, or by the

confessor, or at least by close relatives up to the 4th degree of consanguinity, according to chapter 6, concerning motives and prebends. However, a dispensation must always be accepted by the principal authority in order to have its effect (2). 49.—Note 3. One can make use of a tacit dispensation, provided that a just presumption of consent from the superior can be reasonably assumed. Therefore, if a superior sees a law being neglected, and remains silent, when he could easily and without inconvenience correct the situation, it is justly presumed that he intends to grant a dispensation; Suarez, Sanchez, Castrop, Salmant, and others (3). This applies to the present time, because the Doctors only admit a presumed license, not a dispensation; although, nevertheless, Elbel, citing Suarez, Sylvester, Filliuc, and others, states that in cases of urgent necessity in which one cannot reach the superior to obtain a dispensation, one can properly act with a presumed dispensation (4). 50.—Note 4. There are other reasons that, in themselves, excuse one from an obligation, and in such cases, a dispensation is not required, provided that the reasons are at least probably just. There are also reasons that are sufficient for a dispensation, but they require a dispensation; these include the dignity of the petitioner or the superior, for example, a benign disposition, the common good, or private benefit, and other similar reasons (5). 51. Note 5. In cases of doubt, whether positive or negative, as to whether a case requires a dispensation or not, a subject can exercise his own freedom; although it would be better to consult the superior, so that he may declare his will, or grant a dispensation, since in doubtful cases, a superior, even if inferior, can grant a dispensation, even if nothing specifically concerning this matter has been delegated to him by the superior, as Laym, Castrop, Sa, Dian, and Salmant state (6). However, matrimonial dispensations are excepted; in these cases, not only is the validity of the contract at stake, but also the Sacrament itself; therefore, we cannot act on a doubt, nor even on a probable opinion regarding a fact (if, however, a probable opinion regarding a fact can be given), because in doubts concerning a fact, the Church does not presume to grant a dispensation regarding impediments, as it does in probable cases concerning the law; nor can spouses expose themselves to the danger of celebrating a marriage without the grace of the Sacrament, nor can they lack the assistance of these dispensations. Therefore, in doubtful cases, they must appeal to the bishop, who can properly grant a dispensation in cases of doubtful impediments, as Merbesius, Cabassut, Cont. Tournely, Sa, Pichler, Castrop, Salmant, Roncaglia, Holzman, and others commonly state (7). 52.—A question arises: whether, when there is a just reason, the superior is obligated to grant a dispensation? A distinction must be made: if the reason only makes a dispensation convenient, the superior is not obligated; on the other hand, if it makes a dispensation necessary to avoid some serious harm, or to obtain some great benefit (1) Book 1, no. 185, see Question. —(2) Ibid, no. 186, ad 10. —(3) Ibid, no. 187. —(4) No. 195, see Note. —(5)

Elb. de 3. præcepto 414. —(6) Book 1, no. 192. —(7) See book 6, no. 902, Question II and III.

[*Latin ed. p. 62*]

50. TRACTATE II. ON LAWS. The common good, and even the private good, as Concina, Sanchez, Salm, etc., say, along with St. Thomas (1). But when a dispensation is denied, even unjustly, the subject remains obligated by the law, unless the reason is such that it entirely exempts him from the law, as if, for example, necessity compelled the contracting of marriage without announcements, and the bishop unjustly denied the dispensation, as Sanchez, Concina, Salm, Castrop, and others say (2).

53. Question 2: Does a dispensation hold valid when the superior grants it in bad faith, believing that the cause does not exist, when in reality it does? Answer: If the legislator grants the dispensation, it is certainly valid. But if an inferior prelate grants it, some say that it is invalid; for the inferior is given the power to dispense only for a reason: but the opposite opinion is more common and more probable, because the validity of the dispensation depends not on the knowledge of the cause, but on its existence; just as the election of someone to a benefice is valid, even though the elector may judge him incapable, as in cap. Nihil, on elections (3). This is said differently by Castropal, Pontius, Suarez, Laym, Salas, Soto, and Navar (contrary to Sanchez, Busemb, Salm, etc.) if the dispensation was obtained in good faith, but without a cause, because if this cause ceases, the inferior has no power to dispense in the law of the superior. However, this is understood when it is clear that there was certainly not a sufficient cause. Otherwise, in doubt, possession is held to be equivalent to the value of the dispensation, as the same authors point out (4).

54. Question 3: Does a dispensation obtained under duress hold valid? Answer: Always, and if a just cause for dispensing exists, provided it is not established (unless there is sufficient doubt) that the superior did not intend to dispense, the dispensation is valid, because fear does not remove the voluntary act. And it is also permissible to obtain a dispensation under duress, provided the duress is just, e.g., to approach the superior if he refuses (5).

POINT I. ON THOSE WHO CAN DISPENSE.

55 and 56. On the ordinary power with which the Pope can dispense.

57 and 58. In which bishops.

59. Parish priests.

60. Regular prelates.

61. On delegated power, whoever has it from the Ordinary. If the Delegate dies.

62. Clause, until it is dispensed.

63. Sub-delegate.

64. With himself.

55. It is necessary to distinguish between ordinary and delegated power in this matter. The Pope can dispense in all canonical laws, even those promulgated by the Apostles, just as he can with particular churches. Such are the Lenten fast, the observance of feasts on Sundays, the irregularity of bigamy, etc., as St. Thomas teaches (6), that the Pope can dispense in all things that pertain to the determination of divine worship, but not in the laws which the Apostles handed down as received from Jesus Christ, such as the laws concerning the matter and form of the sacraments, and concerning the offering of the Sacrifice.

56. But can the Pope also dispense in some divine precepts? Answer: It is certain to all that, in those things in which divine law arises from human will, such as vows and oaths, it is possible to dispense (provided a just cause exists). For then the Pope does not abolish divine law, (1) I. a. q. 97. a. 4.

(2) Lib. 1. n. 179.

(3) N. 181.

(4) N. 182. and more fully l. 3. p. 251.

(5) L. 1. n. 184.

(6) Quodlib. 4. a. 15.

[*Latin ed. p. 63*]

OF THOSE WHO CAN GRANT DISPENSATIONS. 51 But to remove such an obligation undermines its very foundation, or, as St. Thomas states (1), it determines what is pleasing to God. The question, therefore, arises whether it is permissible to grant dispensations in matters that are absolutely dependent on the will of God. There are three opinions. The first, held by the Abbot and a few others, affirms this universally. The second, held by Navarri, Cani, Sanch, etc., affirms it only in particular cases, such as in a valid marriage, in the residence of bishops, in granting to a simple priest the power to confer the minor orders and the sacrament of confirmation, and in similar matters; but it denies it in other cases, in each of which indecent behavior must be avoided, such as in the precept against fornication, in changing the substances of the sacraments (at least with regard to substance), and in other similar matters. The third, which is more common and more probable, according to Suar, Sylv., Cast., Cov., and St. Thomas (2), denies it universally, because an inferior cannot act against the law of a superior. Nevertheless, Sotus, Suar., Navar., Coninch., Durandus, etc., very strongly argue that the Pope can, in a particular case, not only grant a dispensation, but also declare that the divine law does not obligate in that particular case: for such power seems necessary in the Pope for the

common good of the Church, due to the many various circumstances that may arise (3). 57. — Bishops can also grant dispensations in all the statutes of their diocese, both episcopal and synodal, by their ordinary authority. The same authority is held by the chapter, when the see is vacant, but not by the bishop's vicariate, as Salm. and Sanch. state with others (4); because a general commission does not include the power to grant dispensations, unless it is specifically granted. Bishops can also grant dispensations to their subjects in the statutes of the provincial council that are not reserved (5). Also, in common pontifical laws, such as irregularities, impediments to marriage, reserved vows, and the like; whenever there is an imminent danger, and there is no easy access to the Pope, as will be said in t. 2, tr. 20, on privileges, n. 29. Also, in those pontifical laws that are especially for that diocese (6). Also, in those cases in which a just doubt arises as to whether a dispensation is needed or not (7). Also, in all those things that regularly occur, such as in vows (provided they are not reserved), in fasts, in the observance of feasts, in abstinence from meat, and the like. And in all these things, they can delegate the granting of dispensations to others: for such power belongs to bishops by ordinary right, being perpetually connected to their dignity (8). 58. — Bishops can also grant dispensations in all canonical statutes in which there is a clause stating, "until a dispensation is granted," because of which the power is given (9). As for whether bishops can grant dispensations in all canonical laws where a dispensation is not expressly reserved, many Doctors admit this, such as Sotus, Covarr., Sporer, St. Antonin (who calls this the "common" opinion), and Elbel (who calls it the "most common" opinion, and for this he cites St. Bonaventure and Scotus), and Castropal. calls it probable, while the Glossa in cap. Nuper de sent. excomm. states: "Because the author of the canon did not specifically retain the power of absolution for himself, it seems that he granted the power to relax [the law] to others." And the Glossa adds: "Here is an argument that bishops can grant dispensations where [a dispensation] is not specifically [reserved] (1) 2. 2. q. 88. n. 12. — (2) 1. 2. q. 97. art. 4. — (3) Lib. 6. n. 119. — (4) Salm. de leg. c. 5. n. 32. et Sanch. de Matr. l. 2. D. 40. n. 12. — (5) Lib. 1. n. 190. — (6) Ibid. v. Item in legibus. — (7) N. 192. et l. 6. n. 902 v. Ceterum. — (8) L. 1. n. 196. v. Possunt, et v. Et in his. — (9) Salmant. de leg. c. 5. n. 37. cum Suar. Cajet. Bonac. Castrop. etc.

[*Latin ed. p. 64*]

52. TRACTATE II, ON LAWS. "A dispensation is not permitted," according to certain laws. However, others argue to the contrary. Suarez, Bonaventure, and Salm argue, citing from the chapter "De Tempore Ordinum," where a certain bishop was suspended because, having conferred multiple orders on the same day, it was stated: "Since such a dispensation is in no way permitted by canon law." They respond to

the aforementioned text, arguing that the dispensation was granted only for the absolution of censures. Nevertheless, the initial opinion remains probable, as the same response can be applied to the second text, which pertains only to the matter of ordination. This is especially true because the words in the first text appear to speak generally, while in the second, the word "such" specifically refers to ordination. Regarding the objection that a lower authority cannot override a higher law, it can be argued that this applies to a lower authority that derives all its power from the superior, but not to bishops, who likely derive their power directly from God (although subordinate to the Pope), as held by Soto, Vasquez, Victor, Tournely, Natalis Alexander, and others. Therefore, many Doctors state that a bishop can, within his diocese, do what the Pope can do in the entire Church, except for those things that the Pope has reserved for himself or that pertain to the universal state of the Church, as mentioned in paragraph 33 (1).

59. Similarly, pastors seem to be able, by ordinary right and custom, to grant dispensations to their parishioners, even in the presence of the bishop, in frequent necessities, but only in those matters in which the granting of a dispensation is appropriate, such as in matters of fasting and abstinence from labor on holy days; so Suarez, Sylvester, Sanchez, Salm, Viva, and others commonly state (2).

60. Regular prelates can also grant dispensations in particular regulations, provided that this is not expressly prohibited to them in any matter. Furthermore, lower prelates can grant dispensations in all matters of minor importance, or those that are specific to that particular community, or those that frequently occur, according to Peirin, Castrop, and others (3).

61. Regarding the delegated power to grant dispensations, it should be noted that anyone who has ordinary power can delegate it to others, as commonly stated by Suarez, Castropal, Pontius, Salm, and others (4). Ordinary power is that which is attached to an office or dignity, as will be explained in volume 3, treatise 20, when discussing Privileges, paragraph 34. If the delegation expires with the death of the delegating authority, this is affirmed if it was made in the form of a commission in a particular case, and the matter is still pending; in this case, the dispensation must be strictly interpreted, because it is then considered odious, according to chapter 1, section 1, regarding the sons of priests. However, if the dispensation was not granted at the initiative of the superior, or if it is not included in the body of the law, as in a decree, or if it is not granted for the common good, or in favor of a particular community, then it does not expire with the death of the delegating authority; and in this case, it must be broadly interpreted (5). Therefore, if there is doubt as to whether a sufficient reason exists for the dispensation, the delegate can grant it, as stated by Cajetan, Sylvester, Sanchez, Salm, Tapia, Granado, and others (6).

62. Note 2: In those laws where the clause is present: (1) Book 1, paragraph 191, and Book 5, paragraph 597, at the end, see "Quod ad." - (2) Ibid., paragraph 190, see "Item potest," and Book 3, paragraph 597, at the end. - (3) Book 1, paragraph 194. - (4) Paragraph 190, see "Et in his," and paragraph 195. - (5) Paragraph 195. - (6) Paragraph 192.

[*Latin ed. p. 65*]

OF THOSE WHO CAN GRANT DISPENSATIONS. 53. Until a dispensation is granted, lower prelates can always grant dispensations, as Cajetan, Suar, Bonaventure, Salm, Castrop, etc., say (1). 63.—Note 3. A delegate cannot subdelegate, unless it is expressly granted to him, or he is a delegate from a superior, or from the Pope; chapter end, § 1, on the office and power of delegation, or if he is a delegate from an ordinary prelate to a university of causes. Book 1, § "Whether from him, etc." (2). 64.—Note 4. He who has the universal faculty of granting dispensations with others, can also grant dispensations even with himself: so generally Cajetan, Layman, Castrop, Salm, Bonaventure, etc., with St. Thomas, 2-2, question 185, article 8, end (3). POINT II. IN WHAT WAYS CAN A DISPENSATION CEASE? 65 and 66. It ceases I. by the cessation of the cause. —67. II. By revocation. —68. III. By renunciation. 65.—A DISPENSATION ceases in three ways: I. By the cessation of the cause. II. By the revocation of the one granting the dispensation. III. By the renunciation of the benefit of the dispensation. 66.—And I. the dispensation ceases by the cessation of the cause. However, this is understood 1. if the motivating cause, or final cause, ceases completely; if only the impulsive cause ceases, or if the motivating cause does not cease in every way, the dispensation continues. It is understood 2. provided that the dispensation has not yet received its effect, and provided that no change in the burden has been added to the dispensation. However, if there is doubt as to whether it has completely ceased, the dispensation is valid, because it is considered to be in possession (4). It is understood 3. if the dispensation was granted under a condition, at least implicitly, if the cause persists: as is presumed, unless the cause was not perpetual. Indeed, if the dispensation is given absolutely, it is granted because of a cause considered to be perpetual (e.g., for the sake of honest conduct, due to the scarcity of ministers, due to the poverty of parents, etc.), then it is likely that, even if the final cause ceases, the dispensation will not cease, because once the obligation of the law has been removed by a dispensation, it does not return, unless it is imposed again by a superior; so Suar, Pontius, Castropal, Salm, Layman, Perez, etc. (contrary to Bonaventure, Trullench, etc. (5)). And whenever a dispensation is granted absolutely, it does not cease even if someone has already used it; for example, he who has been dispensed from the vow of chastity to contract marriage after the death of his spouse, the dispensation continues even after his death, so that he may enter into a second marriage, provided that it was not granted for that specific case

(6). 67.—II. The dispensation ceases by the revocation of the one granting it, who (note here) would sin if he did not revoke it, now that the final cause has completely ceased. Conversely, he would also sin (although only venially) if he revoked it without a cause: but the revocation would be valid (7). Here, the question arises, does the dispensation cease with the death of the one granting it? The answer is: If the dispensation was granted absolutely, or with a clause, until it is revoked, or at the discretion of the Apostolic See, or the bishop, then it does not cease. Conversely, it ceases if a clause is attached, until it pleases us, or at our discretion, provided that the matter has not yet been entrusted for execution (8). (1) Book 1, n. 190, see Note. —(2) N. 195. —(3) See book 3, n. 249, see "Lastly," and n. 256, end. —(4) Book 1, n. 195, see "Question" and n. 196. —(5) N. 196. —(6) N. 196, end. (7) N. 197. —(8) Ibid., see Note.

[*Latin ed. p. 66*]

54 TRACTATE II. ON LAWS. 68.—The [III. Dispensation] ceases, provided it has been accepted by a superior; otherwise, the subordinate will always be able to use it, even if he has never used it before (1). CHAPTER VII. ON THE CESSATION, INTERPRETATION, AND EQUITY OF LAWS. 69. If the purpose of the Law ceases.—70. On prohibited books.—71. On municipal laws.—72. On interpretation.—73 and 74. If declarations require promulgation.—75. On doctrinal interpretation.—76. Rules of interpretation.—77. On equity—78. When the Law is extended from case to case. 69.—Regarding the cessation of a law, the question is debated whether, when the ultimate purpose of the law ceases completely in a particular instance, the law itself ceases to be binding. It is certain that if the ultimate purpose ceases completely in general, the law ceases; for when it becomes useless, it no longer obligates. Thus, St. Thomas (2). And then, it suffices for anyone to know, with probable certainty, that the law has ceased in general (3). However, if the ultimate purpose ceases only in a particular case, then a distinction must be made: if the cessation is contrary, that is, if the law would be harmful in that case, or at least very difficult to follow, then the common opinion is that it does not obligate. Therefore, the question remains whether, when the ultimate purpose ceases in a particular and privative sense, that is, if the law would be useless for that particular case, or for that particular person, it still obligates. The more common opinion is that it still obligates, because although the harm in the particular case may cease, the danger of general deception does not cease, by which each person may be misled in their own case. Thus, St. Thomas (4). But several grave doctors hold the opposite view, namely Cajetan, Sylvester, Panormitan, Angelus, Valentinus, Sahagún, Cardenas, Ledesma, Granado, Henriquez, Hurtado, and Tamburello with Navarrette, Abbot and Comte, and Salamanca, and Viva, also consider it quite probable, saying that just as when the ultimate purpose ceases in general, the

law ceases for everyone, so too when the ultimate purpose ceases in a particular instance, the law ceases in that particular instance, since in both cases the law becomes useless. And just as when the ultimate purpose ceases at one time, the law ceases for that time, even though it does not cease for another time, so too when the ultimate purpose ceases in one case, the law ceases for that case, even though it does not cease for other cases. And therefore, it is commonly admitted that the law of fraternal correction does not obligate where no benefit is expected. And for this opinion to hold, it must always be understood that there is no danger of deception in that case, which is always present in the case mentioned by St. Thomas, namely, fornication, of which he speaks only in the passage cited. 70.—Can prohibited books be read if the ultimate purpose of the law ceases in a particular instance, and there is no risk of scandal? Some admit it, but I say it must be denied, along with Suarez, Castro, Sanchez, etc., because in this case, the ultimate purpose of the law never ceases, even in a particular instance; since the purpose of the prohibition is not only to avoid the harm feared from reading, but also to render obedience to the Church in matters that are so pernicious. In addition, there is a special purpose, namely, to prevent giving cause to writers of a presumptuous and wicked nature to spread doctrines and novelties (5). 71.—Finally, it should be noted that special laws of a particular place do not (1) Lib. 1. n. 198.—(2) 1. 2. q. 105. a. 4. ad 3. cum aliis communiter.—(3) See Salm. de leg. o. 4. n. 4.—(4) 2. 2. q. 154. a. 2.—(5) Lib. 1. n. 199. v. ult.

[*Latin ed. p. 67*]

ON THE CESSATION OF LAWS, ETC. 55. Laws cease to have effect due to a general law, unless they are expressly repealed in that law, or at least by a clause: "Notwithstanding any particular law." 72.—II. Regarding interpretation, it must be known that there is authentic interpretation, doctrinal interpretation, and customary interpretation. Authentic interpretation can be given by the legislator himself, or by his successor, or by a superior authority. Doctrinal interpretation reveals the mind of the legislator, and can be given by any Doctor. Customary interpretation is that which is accepted by usage. 73.—Here, the question arises whether a declaration made by the Pope concerning a law requires promulgation in order to be binding. This must be distinguished. A declaration is either purely such, or not purely such, and is rather to be called an interpretation. A declaration that is purely such is one whose meaning was clearly imbibed from the beginning in the law, for example, if it is doubted whether, under the name of "son," only a natural son is included, or also an adopted son, and the legislator declares that only the natural son is to be understood, then the declaration is of a meaning clearly imbibed in the law. A declaration that is not purely such, or rather an interpretation, is one whose meaning was not clearly imbibed in the law, but rather there are several opinions about it,

and it is only perceived from arguments: for example, if, under the name of "father," the grandfather is included, and it is questioned whether, under the name of "death," civil death is to be understood, including imprisonment, etc., then one must resort to the improper signification. 74.—Given this, we say, with Suarez, Castr, Vasquez, Salas, Salm, Holzapfel, La Croix, and Suppletor, that a declaration that is purely such does not need promulgation, but binds all to whom it has come to their knowledge; since it is not a new law. A declaration that is not purely such requires promulgation in order to be binding, just as any other law, because it is considered as a new law, as stated in n. 4 of this Treatise. Therefore, Suarez and Palaus (who cites Bonaventure, Salas, and Lorca (1)), state that if a declaration made by the legislator is of a meaning clearly imbibed in the law (according to the example given of the natural and adopted son), it does not require promulgation; on the contrary, if the declaration is of a meaning obscurely imbibed in the law (according to the example of the grandfather, if he is included under the name of "father"), it requires promulgation in order to be binding; because it establishes something new, which was not imbibed in the law itself. And Suarez and Palaus (2) also say, regarding a declaration made not by the same legislator, but by his successor, that the mind of the first legislator cannot be clearly known to him, as he himself presented the law; therefore, in declaring it (even if it is of a meaning imbibed in the law), he must resort to arguments and interpretations; which are considered as new laws, and therefore require promulgation; otherwise, the declaration will not be considered as authentic, but only as doctrinal (3). 75.—It is permitted to anyone to interpret laws, provided it is done according to the rules, and the meaning is more accepted by the Doctors; for when doubts arise, and it is not convenient to consult the legislator, it was necessary to grant this power to the wise to interpret the laws, as is stated in c. 2. de privil. in 6. This is common (4). Whether it is permissible to interpret a law when it prohibits any interpretation, Castr (5), with Salas and Suarez, believes that such a prohibition is valid only if the interpretation is frivolous and futile; but Salm (6) rightly contradicts this, because frivolous and futile interpretations are of themselves—(1) Suarez, de leg. l. 6. c. 1. n. 3. Palaus, eodem tit. dist. 5. p. 3. 2. r. n. 5. —(2) Suarez, loc. cit. et Palaus, ibid. n. 2. —(3) See our work, l. 3. n. 1027. v. Here, it is noted, whether it is permissible to take a small amount of wine in a chalice. —(4) Lib. 1. n. 200. et Palaus, loc. cit. 2. 2. n. 1. —(5) Loc. cit. n. 6. —(6) De leg. c. 4. n. 23.

[*Latin ed. p. 68*]

56. TRACTATE II. ON LAWS. There are interpretations that must be refuted and prohibited; therefore, all doctrinal interpretations are illicit, as they are prohibited by Pope Pius IV. The interpretations concerning the Council of Trent were prohibited, and therefore, as Benedict XIV states in *De Synodo*, book 1, chapter 13, paragraph 24, when the *Septimus* Dec-

retal was compiled under Pope Clement VIII, it was not published, because it contained many decrees of the Council of Trent, which would allow for the violation of the constitution of Pope Pius IV (as Benedict XIV states, "private individuals are forbidden to comment and interpret, since this is reserved to the Holy Cardinals of the same council"), thus interpreting the decrees of the council; which could not be prevented if the book had been published; indeed, as other decrees are interpreted by canonists at their discretion, so it would have been with the decrees of Trent. However, many Doctors state that Pope Pius IV did not prohibit all interpretations made incidentally, either orally or in writing, but only those made professionally through glosses, scholia, and commentaries published in print; thus, this prohibition has been interpreted. Castropal, Salas, Barbosa, and Salm, as well as Rodriguez, Reynold, and Henriquez, agree on this (1). Similar statutes were enacted by Pope Innocent XIII in the Apostolic Ministry bull, for the reformation of the Spanish clergy, and confirmed by Pope Benedict XIII in the *In Supremo* bull, for the entire world; for these bulls committed the interpretation, explanation, and declaration of the decrees to the aforementioned Congregation, "provided that some doubt or difficulty arises," as stated in the aforementioned Congregation, paragraph 76. The following rules are given for interpreting laws: 1. The intention and purpose of the legislator, and the reason for the law, must be considered. 2. In case of doubt, the law must be interpreted in favor of the action. 3. The law must be interpreted strictly in cases that are odious, and broadly in cases that are favorable. 4. The words of the law must be understood in their proper sense, unless some absurdity or injustice would result from the legislator. The proper sense is that which the words naturally convey according to the common understanding and usage of men. Analogies (which have multiple meanings) must be understood according to the principal analogy, as noted by Palaus and La Croix (2). This applies equally to penal and prescriptive laws: but in favorable cases, the civil meaning of the words is also considered; for example, under the name "legitimate" come also "legitimates," and the like. To determine whether a law is odious or favorable, the motive for which the law was enacted must be considered (3). 77. III. Regarding equity (which is a presumption, at least probable, that the legislator did not intend to obligate in a certain circumstance), it applies whenever the law would be harmful, or very burdensome, and difficult to observe (4). 78. Finally, it remains to inquire whether the law should be extended from case to case, where the same reason applies. The opinion is divided into two parts, which seem to differ from each other, but in reality say the same thing: indeed, both agree on this, that although the law may extend from case to case, where the same reason is present, so that if it were not extended, the legislator could be blamed for injustice or imprudence, and in this case, the following axiom applies: "Where the reason is the same, the same disposition of the law applies." This occurs

1. in correlatives, for example, just as a bride can be absolved from her (1) Palaus, ibid., note 2. Salm, in *dictio*, note 25. (2) Palaus, *Tractatus*, book 3, chapter 5, page 5, 2, 1, note 7, and La Croix, book 1, note 8, 24. (3) Pal., *loc. cit.*, chapter 2, paragraph 3. (4) L., book 1, note 201, and see Salm, chapter 4, notes 44 and 45, and Pal., *lib.*, chapter 2, note 3, who calls it "commune."

[*Latin ed. p. 69*]

OF CUSTOM. 57. One is released from the bond of betrothal if the betrothed man departs. Chap. Concerning those who are betrothed. Thus also the betrothed man. II. In cases of equality, such as election and presentation to a benefice. III. In cases of subordination, such as a deacon and a subdeacon. IV. In cases of inclusion: for example, to one to whom it is permitted to testify, it is permitted to draw up codicils; to one to whom eggs are forbidden, dairy products are also forbidden. Therefore, in the aforementioned cases, the extension applies; and it applies even if the law were penal or corrective, because Rule 49 of the Rules of Juridical Interpretation states that "what is restricted in hatred should be extended in favor." Suarès, Bona, and others wisely say that this rule is valid whenever the disposition of the law is extended by a congruent interpretation, but not when it must be so interpreted by necessity; for then it should rather be said that the case is comprehended in the law, than that the law is extended to the case. Furthermore (speaking regularly), penal laws do not extend beyond the case expressly stated; for example, excommunication imposed on those who force women to enter monasteries does not apply to those who force men, and the same is said in cases in which the same adequate reason does not apply, as stated above (1). CHAPTER VIII. OF CUSTOM. 79. Conditions required for a custom. — 30. For desuetude. — 81. If the law rejects all future customs. — 82. Usage is the interpreter of the law. — 83. If the law revokes all customs already established. 79. IT IS necessary to distinguish between a custom that introduces a law, and a custom that abrogates a law, which is more properly called desuetude. But speaking first of the former, we say: for a custom to have the force of law, it requires three things: namely, introduction by the community, tacit consent of the prince, and legitimate prescription. I. Therefore, it is necessary that the custom not be introduced by particulars, but at least by a majority of a community capable of establishing a law, even if it does not actually have such power; because then the custom derives the force of law from the tacit consent of the prince, as taught by Salm and St. Thomas (2). II. Tacit consent of the prince is required, who is presumed to be present whenever he could have forbidden it, but for a long time tolerates it; thus the Angelic Doctor (3). III. That due prescription be present; for which are required 1. a long period of time, at least (as stated in n. 11) ten years; 2. a continuous period of time; because if the custom is interrupted within the period of prescription by

a majority of the community, or if the prince takes action against those who introduced it, then the custom is also interrupted; 3. repeated and free acts are required, not out of fear, nor out of ignorance, for example, if the people falsely believed that a law existed, which in reality did not exist: as Layman says (4) with Suarès, Abbot, and Molin, that the people cannot be bound by a new obligation, unless they certainly intended to impose it upon themselves. Therefore, in cases of doubt whether a custom was introduced out of obligation, or out of devotion, and whether under a grave or light obligation, this can be inferred from the circumstances, for example, if the custom imposes a heavy burden, and has been constantly observed for a long period of time, then it should be presumed that it was introduced and continued with the intention of obligating oneself under a grave obligation (5). And so we say that the custom of abstinence is held. (t) See l. t. n. 200. The following is questioned here. — (a) See Salm. de leg. c. 6. n. 6. — (5) l. 2. q. 97. a. 3. ad 3. — (4) L. 1. tr. 4. de leg. c. 24. n. 9. ad 4. — (5) See our work, l. 1. n. 107 ad IV.

[*Latin ed. p. 70*]

58. TREATISE II. ON LAWS. Concerning the days of fasting (1); and the custom of religious orders and nuns reciting the Divine Office (2). 80.— These things are said concerning custom, but two conditions are required for custom to abrogate a law: 1. that it be reasonable, namely, that it be not contrary to divine law; 2. that it be legitimately prescribed, as is stated in chapter "Licet" concerning custom (3). But it must be noted that, 1. in order for custom to derogate from a law, it is not sufficient to have the intention of transgressing the law, but an express intention is required to abolish the law; and therefore, even if a law is prescribed in bad faith, as say Castrop, Bonac, Laym, Salm, etc. (4). In this, Laym observes that those who introduce a custom contrary to the law always sin until the law is perfectly prescribed; but the others, in the meantime, do not sin if they use the introduced custom; thus Laym (5). It must be noted 2. that, although, as has been said, a positive prohibition and a new law are introduced, the intention of abolishing the law is required; nevertheless, if a law is not observed for a long time in good faith, namely, through ignorance of the law, Laym (6) says, with Suar, Azor, Glossa, etc., that even if it is prescribed for a decade, even if the prince is ignorant; for the prince is presumed to tacitly approve any custom that is legitimately prescribed (7). However, this must be understood, unless the prince positively resists any custom contrary to the law (8).

81.—Therefore, the effect of custom is to derogate from the law, even if there is a clause attached to the law, "notwithstanding any custom"; for such a clause refers to past customs, but not to future ones. Indeed, it is probable, as say Suar, Pont, Bonac, Salm, etc., that custom can abolish even laws that will prohibit future customs (9). However, if any future custom is

prohibited in the law, then a distinction must be made. If it is prohibited as being contrary to natural law, or to divine positive law, then the custom can never be valid. Otherwise, if it is prohibited as being unreasonable with respect to the time in which the human law is established, because then, with the emergence of some new cause, the custom can become reasonable, and be valid, as the Doctors commonly teach (10).

82.—Custom can also interpret the law, and therefore, such a custom is called "usual," as was said above, n. 72. And for this, a shorter period of time is sufficient than for prescription. And, speaking regularly, all laws should be interpreted according to the local custom (11).

83.—Finally, it must be noted here that, by general laws, particular local customs that have already been prescribed are never abrogated, unless specific mention is made of them; or unless any custom is expressly revoked in them, as is stated in chapter 1, on custom, n. 6. However, this does not apply to laws that are enacted by bishops; for bishops are presumed to be aware of all customs contrary to them (12). Also, it must be noted that a custom is not considered revoked unless it has been specifically revoked by law, as has been declared many times by the Sacred Congregation (13).

(1) Book 3, n. 1009, v. Dubit. III.

(2) Book 4, n. 141.

(3) Laym, chapter 24, on laws, n. 4.

(4) Book 1, n. 107, ad IV.

(5) Loc. cit. n. 4.

(6) Dict, chapter 24, n. 11.

(7) Laym, loc. cit. n. 11, and Salm, on laws, chapter 6, n. 16, with Suar, Sanch, Bonac, and commonly.

(8) See our work, book 1, n. 107, ad V.

(9) Book 1, n. 108, v. Sed quid.

(10) Sanch, on common matters.

(11) Book 1, n. 108, v. Potest.

(12) N. 109, v. Sed quæritur I.

(13) Ibid, Quær. 2.

[*Latin ed. p. 71*]

OF HUMAN ACTIONS. 59. TREATISE III. OF HUMAN ACTIONS, AND SINS. CHAPTER I. OF HUMAN ACTIONS. 1 and 2. Human actions, and actions of a human being. — 3. Of voluntary actions, and their conditions. — 4 to 6. The different kinds of voluntary actions. — 7 to 11. Of free actions, and their species. — 12. Impediments to human actions. — 13. I. Of ignorance. — 14. II. Of violence. — 15. III. Of concupiscence. — 16, 17 and 18. IV. Of fear, and its different kinds. — 19. From what they derive their goodness or evil. — 20. Whether an external action adds

malice to an internal action. — 21. Whether indifferent actions exist. 1. In the preceding treatises, we have spoken of two rules of human actions, namely, conscience and the law; now we shall speak of human actions themselves, first in general, and then in particular, namely, of sins. 2. St. Thomas (1) teaches that the actions which proceed from a man can be considered in two ways: according to the nature of the act, and according to the nature of morals. When considered in the first way, these actions are called actions of a human being; such are all actions which are performed by men in any way. When considered in the second way, they are called human actions, and are those which proceed from the free choice of human will. Hence, all actions which precede the use of reason are actions of a human being, but not human actions. Two things are required to constitute a human action, so that it may be capable of meriting good or evil, namely, that it be voluntary and free. 3. And first, speaking of voluntary actions, we say that they are those which proceed from an internal principle (namely, not from an external force) with the knowledge of the end; for if this is lacking, then the killing of a man would not be a voluntary act, if he thought he was killing a beast. 4. There are different kinds of voluntary actions: 1. formal, virtual, habitual, and interpretative; 2. elicited, and commanded; 3. direct, and indirect. And 1. the formal action is that which is chosen or commanded by the will. The virtual action is that which proceeds from the will and produces an effect. The habitual action is an act of the will which, once acquired, is never retracted. The interpretative action is that action which is performed without advertence, but which would also have been performed by the will, if the person, being in such circumstances, had to deliberate. 5. Also, 2. the elicited action is every action which is produced immediately by the will, such as to love, or to hate, to choose or to reject something, etc. The commanded action is every action which is exercised by the will through other powers, whether external or internal, such as to meditate, to walk, to see, etc. Here it should be noted, with St. Thomas (2), that every action, whether elicited or commanded by the will, is specified by the end for which it is performed; therefore, those actions which have the same end, although materially different, are of the same species, e.g., (1) I-II, q. 1, a. 1. — (2) I-II, q. 1, a. 3.

[*Latin ed. p. 72*]

TRACTATE III. ON HUMAN ACTS AND SINS. If someone fasts, prays, or preaches for the glory of God, all these are acts of charity. Conversely, if the same act is material, and if it is chosen by the will for various ends, it takes on different forms. 6. — Furthermore, an act is considered voluntary if it is willed and intended in itself; it is indirect if it is willed as a means to an end, with the effect already foreseen, even if not intended. Therefore, for an indirect voluntary act to be considered culpable, it is first necessary that the effect be foreseen; secondly, that the person be obligated to prevent such an

effect; for if he is not obligated to prevent it, and it is not intended, he does not sin by attaching a good motive, even if he foresees an illicit effect from it, as will be explained in more detail in the course of this work. 7. — Moreover (as has been said), for a human act to be capable of meriting good or evil, it must be free. It is true, contrary to Calvin, that even after the sin of Adam, free will remains in man, and as defined by the Council of Trent, session 6, canon 5. Several kinds of freedom must be distinguished: 1. freedom from coercion and necessity; 2. freedom of contradiction and opposition. 8. — And first, there is freedom from coercion, which is called spontaneity; and there is freedom from necessity, which is called indifference. The former implies that the act is spontaneous, that is, free from violence, even if it is necessary, as is the love of the Saints, who necessarily love God, but spontaneously, without being forced. Indeed, St. Thomas (1) teaches, with St. Augustine, that we have freedom of the will with regard to the ultimate end, which does not conflict with the necessity of our natural inclination; but we do not have freedom of choice, or contradiction, which implies the ability to will and to not will, as will be explained shortly. Freedom from necessity, or indifference, implies not only immunity from force, but also from necessity; so that a person can refrain from performing an act, which is called freedom of contradiction, or perform an act contrary to it, which is called freedom of opposition, as will be explained further below. 9. — Secondly, it must be known that there is freedom of contradiction, which is called exercise, namely, the ability to act and not to act; and there is freedom of opposition, also called specification, namely, the ability to perform two contrary acts, such as loving or hating. 10. — With these distinctions made, we say that for a person's will to be able to merit good or evil, it must be free with the freedom of indifference, which alone deserves the true name of freedom, namely, not only to be immune from force, but also from necessity. This is proven from the Council of Trent, session 6, canon 4, where it is said that it is free for a person to assent or dissent to grace. It is also proven from the propositions of Baius and Jansenius, which were condemned; Baius, in proposition 39, condemned by St. Pius V and other Popes, said: "Whatever is done voluntarily, even if it is done by necessity, is nevertheless done freely." In proposition 66: "Only violence is contrary to the natural freedom of man." And in proposition 67: "Man sins even grievously in that which he does necessarily." And when Baius said "grievously," he meant deliberate acts, even if necessary, since he himself admitted (as is read in proposition 75) that involuntary acts, namely, those without the consent of the will, are not considered sins. Jansenius, in proposition 3 from 5, condemned by Innocent XI: "To merit and to demerit in the state of fallen nature, freedom from necessity is not required in man, but immunity from coercion is suf-

ficient." (1) Quest. de verb. a. r.

[*Latin ed. p. 73*]

OF HUMAN ACTIONS. 61 11. — It must be noted here that the root of freedom arises from the indifference of judgment, which is nothing other than deliberation concerning the good or evil that is considered in an action. This indifference of judgment does not yet constitute freedom, but, as has been said, it is the root of freedom, so that the will may subsequently freely and indifferently choose what it pleases. 12. — The obstacles that impede human action, or prevent it from being voluntary, are ignorance, force, concupiscence, and fear, which, otherwise, do not remove, but diminish, voluntariness. We will consider each of these individually. 13. — I. Regarding ignorance, several distinctions must be made. 1. One type of ignorance is negative, which is the lack of knowledge in a subject that is not suited to knowledge; another is privative, which is the lack of knowledge in a subject that is suited to knowledge; another is positive, which is deception or error, and is voluntary. 2. One type of ignorance is of the law, or precept; another is of fact, or of the thing commanded. 3. One type of ignorance is antecedent, or invincible, which precedes all rational awareness; another is consequent, or vincible, which is at least virtually or confusedly known; another is concomitant, which accompanies the action, but is not its cause, nor does it influence it; for the action would be performed in the same way, even if the ignorance were not present: this is the case with the person who kills an enemy, believing him to be a wild beast, but is so disposed that, if he knew him to be an enemy, he would also kill him. 4. Consequent, or vincible, ignorance is divided into crass or supine, and affected. Crass ignorance occurs when a person neglects to know what he can and is obligated to know; affected ignorance occurs when he neglects to seek the truth, in order to sin more freely. Therefore, it is concluded that antecedent ignorance (which is called invincible) prevents and completely removes voluntariness. Consequent (which is called vincible) does not remove, but diminishes, voluntariness. Concomitant neither removes nor diminishes voluntariness, for, as has been said above, it has no influence on voluntariness. 14. — II. Force also completely impedes human action; therefore, that which is done by force merits neither good nor evil. However, force differs from necessity, because the latter can be voluntary, as is the case with beatific love, and it also differs from involuntariness, which can be caused by ignorance. 15. — III. Concupiscence (which is a movement of the sensitive appetite), when it is antecedent, impedes human action, or voluntariness, in part, and sometimes in its entirety, if it completely anticipates reason; therefore, sensual movements, if entirely without the consent of the will, are not imputed to us as sins, neither mortal nor venial (1). However, when concupiscence is consequent, and is that which is excited or commanded by the will, then it does not impede human action, but rather increases

voluntariness and culpability. 16. — IV. Fear, whether it is light or grave, is also called that which causes a man to fall. For it to be grave, it requires that the threatened evil be 1. probably imminent; 2. that it cannot be avoided; 3. that it be of great importance, at least with respect to persons, such as women, children, family members, wards, subjects, etc., in which case there is also reverential fear; but it must be noted that reverential fear is grave when, besides the shame that affects a son, ward, or subject in relation to his father, guardian, or master, he also fears a long-lasting indignation or vexation (2). 17. — It is necessary to 2. distinguish fear from an internal disturbance, which arises from (1) See book 5, Of Human Actions, paragraphs 23 to 25. — (2) Book 3, paragraph 717. The same applies.

[*Latin ed. p. 74*]

62 TRACTATE III. ON HUMAN ACTS AND SINS, AND THE CIRCUMSTANCES ACCOMPANYING THEM; for example, the fear of death by which a merchant throws goods into the sea during a storm, and fear arising from an external cause, namely, from another person. And this external fear can be either just or unjust, which is determined by considering whether the one who instills the fear has or does not have the right to instill it. Furthermore, this fear can be instilled to extort a particular action, or for some other purpose, besides the cause of the fear itself. 18. – Having established this, fear is said not to impede a human act, that is, an act absolutely voluntary, but only in a certain sense; which is to say, it diminishes the voluntary aspect. When fear excuses, or does not excuse, according to the law, this has already been stated in treatise 2, paragraph 44. And when fear invalidates, or does not invalidate, an act, this will be discussed when we speak of vows, contracts, and marriage. 19. – It is asked: 1. From what do human acts derive their goodness and their evil? We answer (whatever others may say) that, with regard to the material aspect, they derive from the objects and the circumstances surrounding them. With regard to formal, or moral, goodness or evil, they derive from the virtues to which they conform, or to which they are opposed. And thus far, we have discussed what pertains to the speculative question; for what pertains to practice, we will address in the following chapter, paragraph 3, number 55, by discussing the specific distinction of sins. 20. – It is asked: 2. Does an external act add a distinct goodness, or evil, to an internal act with regard to essential reward or punishment (for with regard to accidental reward or punishment, this is certain to all)? In this question, the Thomists, along with the common opinion, hold a negative view, while the Scotists affirm. But whatever may be the case with the speculative question, in practice, even the Thomists (as Estius states) say that when the will of an evil act adheres more vehemently to the desired object, or is more delighted by it, then, without a doubt, the external act adds a certain evil to the will. And this usually happens: therefore, Habert rightly says that he who performs a

sin externally always commits a greater evil than he who only desires it (1). 21. – It is asked: 3. Is there a human act that is indifferent in the individual? The Thomists and Scotists agree that there is an indifferent act in species, or in the object, such as walking, looking at a field, etc. The question is whether there is an indifferent act in the individual? The Scotists affirm; but it is more probable that the Thomists deny it, because since man is rational, he is obligated to order whatever he does to some honest end; and if he omits this, he deserves blame for it, and the act is no longer indifferent, unless it is possible that, through ignorance, he sometimes acts without awareness. These things are sufficient regarding these three most famous questions, which pertain more to Scholasticism than to Moral Theology. Let us proceed to speak of the sins that are human acts in species. (r) Book 5. On Human Acts. n. XL.

[*Latin ed. p. 75*]

OF SINS IN GENERAL. CHAPTER II. OF SINS. PARAGRAPH I. OF SINS IN GENERAL. 22 and 23. Of mortal sin, and venial sin. — 24 to 39. Of advertence. — 40 to 45. Of consent. — 46. Of philosophical sin. 22. — SIN is defined by St. Augustine and St. Thomas (1): "A word, deed, or thought contrary to the eternal law." It is said to be contrary to the eternal law because the entire formal malice of sin consists in this; therefore, this definition includes both sins of commission and omission, since all offend divine law; and it includes transgressions of human law, to which the divine law itself commands obedience: "Therefore, he that resisteth the power resisteth the ordinance of God. And they that resist purchase to themselves damnation." Romans 13:2. 23. — Every sin is an offense to God, not effectively, because, as the Angelic Doctor says (2), God is incapable of being harmed; but affectively, and it is a true injury, and a contempt of divine majesty, which is subordinated to the creature. Whether, however, a venial sin should also be called a transgression of divine law, we affirm with Estius, Soto, Azorius, and others, because, although St. Thomas (3) says that a venial sin is not against, but rather outside of, the law, nevertheless, this must be understood in the sense that it is only contrary to the order of the law, not to its end, which is charity. But this order of the law to be observed is also a precept: "Be not willing to make any manner of lie." Ecclesiastes 7:14. "Swear not at all." Matthew 5:34. Therefore, a venial sin is also against the law, when it is expressly forbidden by the law. 24. — It must be held as certain, as stated in n. 2, that sin, in order to be imputable, must be voluntary, and that in order for it to be a mortal sin, it must be committed with full consent. Therefore, 1. full and perfect advertence to the malice of the object is required, and therefore, the first movements of concupiscence, which completely prevent reason, are without guilt. The second movements, which occur with some advertence, from those who are half-asleep, or otherwise distracted, can be at most venial. But delib-

erate movements, in which the mind fully, or at least confusedly, understands the malice, and the will consents to them, are mortal; thus, generally, the theologians agree with St. Thomas (4), who says that a mortal sin, by reason of its object, can become venial because of the imperfection of the moral act, when it is not deliberate, but sudden (5). Hence, elsewhere, he says: "If anyone, from some passion, bursts forth into words, the meaning of which he does not consider, and then it is a venial sin, and not properly blasphemy (6)." Furthermore, elsewhere he says: "He who swears by a slip of the tongue, if he is aware that he is swearing, and that what he is swearing is false, is not excused from mortal sin. But if he is not aware of this, he is excused from the crime of perjury (7)." Therefore, it is concluded, with the common opinion, that semi-complete advertence is not sufficient for mortal sin, but full and (1) n. 2. q. 71. a. 6. — (2) n. 2. q. 75. a. 8. ad 2. — (3) n. 2. q. 88. a. 1. ad 1. — (4) Q. 7. de malo a. 6. per tot. et n. 2. q. 88. a. 6. — (5) S. Thom. n. 2. q. 88. a. 6. — (6) Id. n. 2. q. 15. a. 2 ad 3. — (7) Id. n. 2. q. 98. a. 3 ad 2.

[*Latin ed. p. 76*]

TRACTATE III. ON HUMAN ACTS AND SINS.

64. "And the reason is," as the Cardinal Gotti rightly says, "because a sin, to be mortal, must be fully voluntary and free, and therefore must be committed with full awareness" (1).

25. But the great question is, whether for a mortal sin, actual and express malice is required in the act, or whether virtual and interpretative malice suffices. The first opinion, which was formerly held by Cajetan (2), and by Medina, Loppez, Serra, Prado, and others apud Salm. (3), and which is strongly defended by Concina, the Continuator of Tournely, Angelus Franzoja, Antoine, and others more recent (4), states that actual awareness is by no means required, but that virtual and interpretative awareness is sufficient: which consists in the fact that a person is held and can know the malice of an action, even if he does not actually realize it; otherwise (as they say), all wicked men would be considered free from guilt, who, blinded by their passions or bad habits, commit many evils, without realizing anything.

26. The second opinion, which is more common, affirms that actual awareness of malice, or of the danger, or at least of the obligation to be aware, is required. This is held by Sylvius, Suarez, Tapia, Sanchez, Sayrus, Palaus, Salas, Bonac. Salmant., both scholastic and moral, Gamachæus, Isambert, Du Val, as well as Vasquez with Lyrano, Tostato, Adrian VI, Curiel, Victoria, Corduba, and others (5). Also, St. Antoninus, Wigandt, Sainte-Beuve, and Cardinal Gotti, whose words and passages are quoted below. They say that for every mortal sin, some awareness, or suspicion

of malice in the act, either in itself, or in its cause, is required, at least in a confused manner. Their reasoning is that nothing is willed unless it is known; therefore, ignorance cannot be imputed as guilt, unless at least some confused apprehension of the malice of the object is had; for he who in no way realizes the malice of his action, or the obligation to be aware, does not sin against it by doing it.

27. With these premises, I offer my opinion, and I say that, within just limits, these two opinions can easily be reconciled. For if it is said that for all mortal sins, actual and express awareness is necessarily required, this is certainly false, because it can happen many times that many evils, although not actually and expressly realized, are nevertheless imputed to guilt by those who commit them, if their ignorance is in some way voluntary, or due to negligence, or due to passion, or to a bad habit, or due to voluntary inconsideration in acting.

28. First, ignorance may be voluntary due to negligence, as St. Thomas teaches (1-2, q. 76, a. 3), who precedes the rule by saying: "Ignorance which is the cause of an act, because it makes it involuntary, has of itself" what excuses from sin, because it is voluntary in the matter of sin. Then he adds that ignorance can be voluntary in two ways: "either" directly, as when someone deliberately wants to be ignorant, in order to sin more freely; "or" indirectly, as when someone, due to labor, or other occupations, "neglects to learn what would prevent him from sinning. Such a person, therefore, (1) Gotti, tr. de vitiis, q. 1, dub. 4, 2, 3, n. 10. (2) Caj., 2-2, q. 88, a. 1, dub. 5. (3) Salm., tr. 20, c. 15, n. 5. (4) Conc., in Comp. theol., 1-8, D. 3, c. 2, n. 14. Cont. Tourn., tr. de pecc., c. 4, a r. Franzoja, in Busemb., 1-5, c. 2, de peccat. Anim. P. Antoin. (5) Sylvius, in 1-2, p. 76, a. 3, q. 3, concl. 2. Suar., tom. 5, in 3, p. D. 4, sect. 8, ex n. 14. Tapia, l. 5, q. 9, a. 5 et 11. Sanch., De præc. Dec., l. 1, c. 16, n. 21. Sayr., Thes., l. 2, c. 9, n. 11. Pal., tr. 2, D. 1, p. 15, n. 5. Salas, tr. 15, D. 8, sect. 11, n. 87. Bon., de censur., in communi, D. 1, q. 2, punct. 1. Salm., Schol., tr. 15, D. 13, dub. 1, et Mor., tr. 20, c. 14, n. 8. Gam., t. 2, p. 194. Isamb., p. 255. Vasq., 1-2, q. 123, c. 2, n. 6. Du-Val, D. 1, 178.

[*Latin ed. p. 77*]

OF SINS IN GENERAL. 65. Negligence makes ignorance itself a voluntary act, and therefore a sin, provided it concerns matters which one is bound to know and is capable of knowing. Therefore, such ignorance does not entirely excuse one from sin. However, if the ignorance is entirely involuntary, either because it is invincible, or because it concerns matters which one is not bound to know, such ignorance completely excuses one from sin. Note that negligence makes ignorance itself a voluntary act. Furthermore, note that the Angelic Doctor, in the last words quoted, does not doubt that invincible ignorance, even concerning matters which one is bound to know, can indeed occur. He writes elsewhere (De malo, q. 3, a. 7, ad 7): "Ignorance which is entirely involuntary is not a sin." And this is what

Augustine says: "It is not imputed to you as a fault if you are ignorant unwillingly, but if you neglect to know." However, by adding, "but if you neglect to know," he makes it clear that ignorance is a sin resulting from prior negligence, which is nothing other than failing to apply the mind to understanding those things which one ought to know. In the same place, St. Thomas adds that ignorance is considered voluntary when a person "refuses knowledge, either because of the labor involved in learning, or in order not to be hindered by a sin which he desires." And thus, ignorance is, in a certain way, imposed by the will. Therefore, in these passages, the Doctor does not consider the ignorance of one who does not notice to be blameworthy, but rather that of one who neglects, or who, in a certain way, refuses to apply the mind to learn those things which he is bound to know concerning a matter that is urgent, as he expresses more explicitly in the body of the aforementioned article, saying: "The cause of ignorance is not applying the mind to know, and this very failure to apply the mind to know what one ought to know is a sin of omission." 29. Secondly, ignorance becomes voluntary because of a passion which one desires to follow deliberately; for those who act according to their passion, every wicked effect connected with that passion will be imputed to them, even if it is not recognized in particular; because when a person embraces a passion, he consequently embraces all the effects commonly arising from that passion, which, although not foreseen in particular, are foreseen at least in a confused way; for when one desires to fulfill a passion, such as vengeance, he consequently admits, at least in a confused way, whatever perverse means that may lead to fulfilling that passion. Therefore, the effects, although not voluntary in themselves, are voluntary in their cause, namely, in adhering to the passion. Thus, St. Thomas also teaches (1-2, q. 6, a. 8), where he calls the ignorance of one who acts through passion "ignorance of evil choice," saying: "In another way, ignorance is said to be voluntary of that which one can know and ought to know; thus, not to act, and not to will, is said to be voluntary." Therefore, in this way, ignorance is said to be, either when someone does not consider what he can and ought to consider, which is the ignorance of evil choice, or it arises from passion or habit. He repeats this in Opusc. de malo, q. 3, a. 10, where he says: "The bondage of reason by passion is not imputed to a fault, unless perhaps with regard to the principle of such a passion, which was voluntary; for the will could have prevented the passion from proceeding so far from the beginning." Furthermore, elsewhere (1-2, q. 77, a. 6), he says: "Sometimes, the passion is not so great as to completely interrupt the use of reason, and then reason can exclude the passion, by turning to other thoughts, or by preventing it from achieving its effect."

[*Latin ed. p. 78*]

66 TRACTATE III. ON HUMAN ACTS AND SINS. 30.—In a third man-

ner, ignorance becomes voluntary through the reason of a corrupt habit, as is also stated by St. Thomas, in the aforementioned passage (1-2, question 6, article 3). And thus, evil acts that proceed from a corrupt habit are likewise voluntary, either in their cause, that is, when the corrupt custom is voluntarily contracted in the beginning; or rather, as I believe, along with Antoine, and the author of the book entitled: *Instructions for a New Confessor*, these sinners with a corrupt habit, although they may have less clear knowledge than others, nevertheless always have some actual knowledge of their crimes, sufficient to render their acts deliberate and mortal; for when they commit sin, it does not leave in their minds that sensible and memorable impression which is left in another who has a less corrupted conscience; and from this it happens that in their memory, there remains no trace of that actual knowledge which they previously had of the sin, or the trace is so slight that, when questioned, they easily answer that they did not notice it; but a prudent confessor should not give credence to them. And it seems that the same can be said of those who act according to their corrupt passions, in whom not only is there no knowledge of the matter of their faults, but the knowledge is so obscure in them that it can scarcely be discerned. 31.—Finally, in a fourth manner, ignorance becomes voluntary and culpable, as Tannerus and Antoine say (1), following St. Antoninus, when a man, in acting, negligently fails to apply the consideration that the matter at hand deserves; for he who has already noticed (as Antoine rightly says) that something more needs to be considered, and yet wants to act hastily, is rightly held accountable for all the errors he commits. 32.—On the contrary, it seems to me that it must be held absolutely that, if ignorance is not voluntary in any of the aforementioned ways, and if a man has no actual awareness of the malice or danger, neither directly nor indirectly, nor in himself, nor in its cause, then in no way are the errors he does not notice imputed to him. The reason is that, for the effects of a cause to be imputed to someone, it must necessarily precede (at least in the beginning) an actual and explicit awareness of the malice of the object; for, as the Salmanticenses rightly say (2), interpretative knowledge is based on some explicit knowledge, just as indirect voluntariness is based on direct voluntariness. Furthermore, interpretative knowledge presupposes an obligation and the power to act; but, lacking all explicit awareness, there is no power to act, and therefore no obligation, since no obligation binds unless it is somehow recognized beforehand. 33.—Objection: All ignorance in one who is bound and able to perceive his obligation is vincible, and therefore culpable. But Sylvius and Suarez rightly respond that he who is completely ignorant of the malice of the object, and yet of the obligation to perceive it, indeed has a remote, or physical, power to perceive it, but lacks the proximate and ready power that is necessary for a man to recognize the deformity of his actions. "Who does not know that it is within a man's power to know?" says St. Augustine (l. de spir. et litt. c. 35, n. 63, at the

end). Therefore, he cannot naturally and in a human way overcome his own ignorance. He will recognize his action as an action, but he will ignore it as being evil; for the knowledge of the object in a physical sense is not sufficient as a principle for saying, (1) Tanner, vol. 2, part 4, question 5, doubt 5, n. 103; Antoine, part 3, treatise on sin, chapter 4, question 2, at the end. (2) Salmanticenses, treatise 20, vol. 15, n. 7.

[*Latin ed. p. 79*]

ON SINS IN GENERAL. 67 Nor is it to inquire into the object in the moral order, which indeed differs entirely from the physical order. "When no such thought," it is wisely said by Suarez, "enters the mind, by which the will may be excited to seek knowledge, it is not within the power of a man to move himself towards it, and consequently, such ignorance cannot be imputed to a man" (1). And this is what St. Thomas teaches (1-2 q. 76 a. 2), saying: "Therefore, ignorance of those things which one is bound to know is a sin, through negligence. But it is not imputed to a man through negligence, if he does not know those things which he is not bound to know; therefore, that ignorance is called invincible, because it cannot be overcome by effort." But this effort or diligence to be employed to dispel ignorance, as rightly observed by Sylvius with Medina and Richard (2), should not be excessive, but it suffices if it is moral, and such as prudent men commonly employ in serious matters; for if a doubt arises, the unlearned should consult experts; the learned, on the other hand, should consult books, or confer with other learned men. 34.—Finally, I observe that this opinion is generally held by authors, not only by probabilists (who do not consider it merely probable, but as certain among all, as Suarez writes), but also by anti-probabilists; for Sainte-Beuve, a doctor of the Sorbonne, says: "If one considers only the act materially or physically, and not formally or morally, it will be only a physical act, and not a moral act; therefore, it will not be evil, and in this, there will be no malice" (3). Cardinal Gotti writes: "Secondly, I say that for a mortal sin, it suffices that there be an implicit or virtual awareness of the malice of the action or of its danger. For if one doubts or suspects the malice of his action, or the danger of malice, and yet neglects to inquire into the truth of the matter, he is considered to intend the malice itself" (4). Father Wigandt also says: "I say 1. Deliberation or awareness is twofold: one is full and perfect, which is present when a man is aware, not only of the operation as to its natural entity, e.g., of eating meat, but also of its malice, or of the danger of transgressing the law; the other is imperfect, etc. I say 2. For something to be imputed to mortal guilt in an individual, there must have been full and perfect deliberation (5)." St. Antoninus agrees with these, who, for sinning mortally in sensual pleasure, requires not only deliberation, but also awareness of the danger, with these words: "Therefore, if such complacency remains after sufficient deliberation and awareness of the danger, then it is mortal (6)." Elsewhere

he says: "Defect of right judgment belongs to the vice of consideration, as it is clear that if someone fails to judge correctly, it is because he neglects or disregards those things from which right judgment proceeds (7)." Continuator Tournely also agrees, and concludes thus: "Therefore, in order to remain within the limits of truth, we believe with those who say that if one does not perceive the malice of sin, either by natural distraction, or by a similar cause, he is not held guilty of sin. Thus, the penitent will be excused who does not fulfill the prescribed penance through forgetfulness (1). (1) Suarez in 3. p. t. 5. D. 4. sect. 8. n. 18. — (2) Sylvius in r. 2. q. 76. a. 3. concl. 2. et deinde j. 3. concl. 1. — (3) Sainte Beuve de pecce D. 5. sect. 1 à 3. — (4) Gotti in de vitiis q. 1. dub. 4. 2 5. 21. — (5) Wig. tr. 14. Ex. 2. de pecc. n. 50; — (6) S. Ant. p. 3. clt 3. e. 5. in fin. (7) Idem ibid. e. 17. ubi initi.

[*Latin ed. p. 80*]

68. TRACTATE III. ON HUMAN ACTS AND SIN. "It must be said differently concerning the actions which men, absorbed in worldly matters and subject to their passions, elicit or omit, so accustomed are they that they do not even think that they are not thinking (1)." But we have already stated this above, numbers 28 to 31. Antoine also agrees, who, speaking of ignorance, says that inadvertence or inconsideration is blameworthy in one who omits due diligence, or who acts hastily, even when aware of the matter, and who requires greater consideration; or who, by a positive act, seeks to follow a passion that hinders awareness. "On the contrary," he says, "if inadvertence is invincible in a person who has due habitual knowledge, then he is entirely blameless, and the things that result from it, contrary to the law, do not constitute sin; because malice, in such a case, is not at all, not even interpretatively, voluntary; for without the power of knowledge, there cannot be will (2)."

35. Therefore, it must be concluded that the opinion of those (if any are present) who say that all errors committed by one acting against the law are imputable to him, even if there has never been any actual awareness, either direct or indirect, of himself, or of the cause, at least in a confused way, but only an interpretative awareness, consisting only in the fact that he ought and could, by his own physical and remote power, have perceived the malice: this opinion cannot in any way be maintained; otherwise, it would follow that many men, burdened by many grave sins, would find that they had never had any knowledge of them. They would say that these men deserve the loss of light, as a punishment for other sins, such as for their unbridled desires, for failing to fulfill the obligations of their own state, and for other negligences, through which, otherwise, they would have clearly perceived the malice of their actions; and therefore, all their errors are imputed to them as sins. But in order for this argument to be valid, the presupposed proposition would first have to be proven, which is not proven to us: for, because of other defects, God may deprive someone

of his further light, through which, if he had remained steadfast in his temptations and passions, he would have been able to perceive the malice; and therefore, that loss would cause such a person to fall into sins that he would sufficiently perceive to be sins; but it would not cause him to be imputed errors that he does not, in any way, either expressly or confusedly, recognize as sins; because where there is no knowledge, there is no freedom; and where there is no freedom, there is no sin. They will object: But St. Thomas (lect. 7 in cap. 1 of the Epistle to the Romans) says: "If ignorance is caused by sin, it cannot excuse the subsequent sin." But we mean that this must be understood of voluntary ignorance in some way, as explained above by the same Angelic Doctor. Furthermore, the Saintly Doctor speaks there of the infidels, who, by erring in faith, and because of their certainly blameworthy ignorance, are rightly imputed to sin all the evils they commit.

36. Furthermore, if all a man's errors are imputed to him without any awareness, even though he, having already exercised due diligence, judges that he is acting correctly, it would follow that it would not be sufficient to act honestly by following opinions (if they are less safe), nor probable, nor highly probable, nor even morally certain. But this cannot be said, since proposition 3, which stated: "It is not permissible to follow the most probable of probable opinions," has been condemned by Alexander VIII.

37. It remains to answer the lengthy objections of the adversaries; but we will be brief. They object I. in Reg. 13 of the law, in 6, where it is said: "Ignorance of the fact does not excuse, but ignorance of the law does." But this is well answered (1) Cont. Tourn. tr. de pecc. e. 4. a. 1. part. i. → (2) Antoine part. 1. tr. de peccat. cap. 4. q. 7. v. Quare.

[*Latin ed. p. 81*]

ON SINS IN GENERAL. 69 Sylvius (1) understands this to apply to civil laws, as already explained by the Glossa there; for in the judicial forum, after the promulgation of the law, the ignorance of the transgressors is ordinarily presumed to be vincible, unless there is some reason that would lead one to presume the contrary, as is stated in chapter "In tua," title "Qui matrim. accus.," etc. 38. — II objects that, if actual awareness were required for all sins, the Jews who crucified the Lord, the pagans who killed martyrs, and the countless heretics who commit innumerable crimes would be considered blameless. But to all of these, the answer is given in a single word: namely, that the ignorance of all of them was and is entirely crass. For Christ the Lord, speaking of the Jews, said: "If I had not done among them the works that no other man hath done, they would not have sin: but now they have both seen and hated both me and my Father." John 15:24. The same must be said of the unbelievers and heretics, to whom all their errors are justly imputed as guilt because of their malice or their supine negligence. 39. — III objects that the opinion requiring some actual

awareness does not differ from that which maintained that a philosophical sin was immune from theological guilt. But it is answered that this opinion was therefore rejected by Alexander VIII, because he who acts against right reason, as is assumed in a philosophical sin, even if he does not believe that he is offending God, is in fact already offending; for by offending rational nature, he offends the Author of that nature as well. But in such a sin, it is always required that a man be aware that his action is contrary to right reason. What, then, is common between a philosophical sin and that action which a person, in no way, not even in confusion, realizes is evil, and perhaps sometimes even considers to be good? 40. — Furthermore, for a sin to be mortal, the full consent of the will is required, as is commonly taught by all Catholic Doctors, Contensonius, Tournely, Gonet, Wigandt, Gotti, Concina, Sanch. Salmant. Cardenas, etc., from St. Thomas, 3rd part, question 88, article 7. The reason is that a perfect voluntary act is required for a sin to be consummated, which is the same as full consent (2). However, the will can consent to a grave sin with indirect consent; namely, when, foreseeing the effect, it wills the cause, as stated above; but this is understood when there is an obligation to prevent the effect, for if in any case such an obligation is not present, he will be excused (by stating the cause) from the malice of the effect, since he does not positively will it, although he foresees it (3). 41. — It should be noted that, after understanding and awareness, the will can be directed in three ways regarding the sinful object presented to it: 1. positively, by consenting to it, 2. positively, by resisting it, 3. negatively, by remaining neutral, neither consenting nor resisting. Hence arises the question of whether one sins gravely who remains neutral, and does not positively resist the sensitive appetites concerning an object that is gravely evil? Generally speaking, according to the truer opinion of Gerson, Sanch. Castrop. Salmant., with St. Thomas and others, such a person sins lightly, but not gravely; for the danger of consent, which can be present in not resisting, is not close at hand, but only remote (4). 42. — But differently, it proceeds in carnal delectation, to which (according to the common opinion of Doctors) we are bound to resist positively and gravely, because these (1) Sylvius 2. 3. q. 76. a. 8. qu. 1. concl. 7. — (2) Lib. 5. n. 5. — (3) Ib. v. Prænotand. II. — (4) Lib. 5. n. 6.

[*Latin ed. p. 82*]

70 TRACT. III. ON HUMAN ACTS AND SINS. When passions are strong, they can easily draw the consent of the will, if the will itself does not actively resist (1). 43.—As for how to resist such carnal temptations, a certain modern author, concerning the restraint of external and sensual agitation, says that it is very helpful to cover oneself with clothing and to compress the agitated parts. As for preserving the soul from consent, it is helpful to have devout thoughts about the death of Jesus Christ, about hell or death; and it is also very beneficial for the soul to consider the pangs of

conscience that the soul, having committed sin, will feel when it realizes that it has lost God. But above all, it is helpful, indeed necessary, to turn to prayer in such temptations; for (according to the Book of Wisdom), chastity cannot be attained except from God, and through prayer: "And because I knew that I could not be continent otherwise, I besought the Lord, and I prayed." Wisdom 8. 21. The confessor must be vigilant in suggesting these considerations to penitents, especially to those who relapse, and must not follow the example of those who are satisfied to hear from the mouth of the penitent that they will sin no more, and who, without any further discourse, absolve them. Furthermore, they should be warned not to engage in mental conversation with temptations, but to renew their resolve that they are more willing to die than to consent to offend God, and to immediately invoke the most holy names of Jesus and Mary with confidence, intending by this invocation to seek their help. I said, not to engage in mental conversation with temptations; for all the teachers of the spiritual life warn that in such sensory temptations, as well as in those against the faith, it is better to divert the mind to something else, than to "struggle" with them (as it is commonly said), by opposing them with acts of the will, and by seeking reasons why they should not consent. But when the movements are slight, it is better not to resist them, if one disdains them (2). 44.—Furthermore, it should be noted that there is no obligation to resist carnal temptations and movements when there is a just reason for not resisting, such as when someone has experienced that by resisting, the movements are increased, and on the contrary, by disregarding them, they cease; or when the movements arise from some necessary or useful action, such as hearing confessions or reading books to learn moral or medical doctrine, or from necessary touches in treating illnesses, and the like. For then (as the Doctors teach), we are not bound to omit such an action because of these involuntary movements, nor to resist them positively, if those movements persist, and it would be a great annoyance always to have to repel them positively. It is then sufficient to take care not to consent; and this very diligence will be sufficient resistance. Thus say Tolet, Cajetan, Layman, Tournely, Azor, Sanch, LaCroite, etc. (3). 45.—It should be noted that sins of omission require a positive and deliberate act of the will in consenting to the omission of a commanded act, as Gonet, Filliuc, and Salm teach very well, whatever others may say (4). Furthermore, omissions that arise from a previously established cause are not imputable as sin when the commandment is omitted, but when the cause is established, as Sanch, Becan, and Filliuc rightly say, contrary to others. Therefore, he who establishes a cause, foreseeing the effect, for example, he who becomes intoxicated, foreseeing that he will neglect his duty, and if it should happen that he is present at the duty afterward, he must confess the sin of omission, because he has given his consent, when he—(1) Book 5, n. 7. — (a) See Book 5, n. 8. — (3) Book 5, n. 9. — (4) See

Salm, tr. 20, e. 10, n. 11.

[*Latin ed. p. 83*]

ON PARTICULAR SINS, etc. 71. He placed drunkenness among them (1). Nevertheless, if a punishment is attached to a completed sin, and someone repents before the consequences follow, then he is guilty of the foreseen effect, but he does not incur the punishment; because the punishment requires contumacy at the very moment the sin is committed (2). If someone omits the sacred service in order to go hunting or to indulge in games, it will suffice if he confesses only the omission of Mass; because, indeed, hunting and games are for him a mortal sin, because they are the cause of the omission of the sacred service (3). 46. — It should be noted that the third proposition, which stated that a philosophical sin, namely, that fault which is recognized as being against reason, but not against divine law, does not merit eternal punishment, was rightly condemned by Alexander VIII, with the words: "That which occurs in one who either ignores God, or does not actively think of God, is a grave sin, but not an offense to God, nor is it a mortal sin that dissolves friendship with God, nor is it deserving of eternal punishment." Because he who realizes that his action is contrary to the reasonable nature, realizes at least in a confused way the injury that is done to the author of nature, who is God Himself.

POINT II. ON PARTICULAR SINS, ON DESIRE, COMPLACENCY, AND DELIGHTFUL FANTASY.

47. Desire, joy, and delightful fantasy.

48. Whether a species should be specified in delight.

49. Delight in a wicked deed, and in a wicked thought.

50. Desire for evil, if it were licit.

51. Delight and desire between betrothed, etc., and between spouses.

52. Delight in a wicked cause for a good effect.

53. Harm to another for a good end.

54. On things prohibited by positive law.

47. — Among sinful thoughts, desire, joy (or complacency), and delightful fantasy must be distinguished from each other. Desire refers to the future time, and it is when a person deliberately desires to commit a wicked deed. This desire is said to be effective when someone intends to carry it out; it is ineffective when he consents in will to carry it out, if he could: e.g., if he were to say: "I would like to steal the treasure from the church, if I could." Joy refers to the past time; and it is when a person is pleased with the evil he has done. Delightful fantasy, finally, refers to the present time, and it is when someone imagines the act of sin happening to him, and rejoices in it, as if he were committing it at that moment. And it is called delightful, not because it takes a long time to commit the sin, because that can be completed in a moment; but because of the deliberate

delay that the will makes (4).

48. — Given this, it should be noted that both desire and complacency encompass the entire wickedness, and all the species by which the object is characterized; therefore, if someone, for example, desires to have carnal intercourse, or is pleased with the intercourse he has had with a woman, he must specify the quality of the woman, whether she is married, or whether she has a vow of chastity. Therefore, Salm. (5), Lugo, Castrop. etc. teach rightly that if someone boasts of a sin committed, he must specify all the species of that sin in confession, because in boasting of it, he regularly adds to the wickedness of the boasting also complacency in the sin committed (6). Whether the same should be said of delightful fantasy, is a question.

(1) Book 5, no. 10, see Note III.

(2) Ibid., at the end.

(3) E.g., see Ilic denum.

(4) See our work, Book 5, no. 15.

(5) Tract. 20, chap. 3, no. 66 and 67.

(6) Book 5, no. 26.

[*Latin ed. p. 84*]

72. TRACTATE III. ON HUMAN ACTS AND SIN. Some affirm, as Cajetan, Lessius, Sanchez, etc. Others deny, as Azor, Lugo, Bonaventure, Laym, Conineh, Castropal, etc., who say that if someone is delighted by the union of a married couple, not as a married couple, but only as beautiful people, they do not commit adultery, provided that the circumstance of adultery does not enter into the delight, as it does in the case of desire and lust, which (as has been said) exhaust the entire object, as it is in itself, and cannot be separated from that circumstance. This opinion is highly probable in speculative terms, but in practice, I say with Holzman, that there is undoubtedly a danger of all the circumstances of the object being present in delight, because in that delight there is the proximate danger of desiring to sin with such a person (1). 49. — Note 2. There is a different delight in evil, when the evil act is the object of delight: and this delight is undoubtedly gravely sinful, if the act is a mortal sin. There is a different delight in the thought of an evil act, when one is not delighted by the evil act itself, but only by the thought of it: for example, someone reads obscene material, and is not delighted by it, but only by the reading of it. This delight can also be grave, when there is the proximate danger of consent: but when there is no such danger, it will be only venially sinful; indeed, it will be without any sin if there is a just reason for reading or thinking about such things, for example, for study, medicine, or hearing confessions, etc. St. Thomas, 1-2, q. 74, a. 8, and St. Antoninus, Sanchez, Lessius, Bonaventure, Salm, and others commonly (2). 50. — It is asked: Does one sin gravely who desires an object that is gravely evil, but under the condition that it

would be licit? In things prohibited by positive law, it must certainly be denied. There remains a doubt in things prohibited by natural law. And then it must be distinguished: if the condition removes all the evil of the sin, for example, if someone were to say: If God permitted me, I would want to take Titus' horse; he would not sin, or at least not gravely: otherwise, if the condition does not remove the evil. For example, I would sin if there were no hell; I would kill if I were not a priest, and the like. And the same is reasonably said by Sanchez, Laym, Azor, about the one who would say: If it were not a sin, I would avenge myself, I would blaspheme, etc.; for since these things are intrinsically evil, they can never be separated from their evil. Although it is probably said by Sanchez, Bonaventure, Castropal, Vasquez, Salazar, and Salm, with Cajetan and others, that when someone desires something evil under the condition that it would not be evil, they never truly desire evil, but only show an inclination towards it, which does not reach the point of mortal sin. But he who absolutely wishes that what is intrinsically evil were not prohibited, cannot be excused from mortal sin, as Salm rightly says (3). 51. — It is asked: Can a betrothed person be delighted by intercourse with their betrothed, under the condition that they were married, or by thinking about the time when they will be married? Some absolutely admit it. Others admit it only if the delight is in the reasonable appetite alone, excluding the danger of sensual appetite, that is, without the disturbance of the spirit. But we, with Sanchez, Suarez, Laym, Azor, Salm, Holzman, Roncaglia, Croix, etc., say that neither is to be admitted, because delight makes the object present, and since the object is then present, even with the condition of licitness, the object is certainly (1) Lib. E., n. 18, in fine. — (2) N. 17. — (3) N. 23, see Question.

[*Latin ed. p. 85*]

OF SINS, IN PARTICULAR, etc. 73. Evil, and although consent is conditioned upon the object, it is nevertheless absolute with regard to the pleasure (1). Another thing, says Roncaglia, is if the bridegroom simply desires the future union with the bride, when she will be his wife: because then he desires something for a time when it will truly be permitted to him. But notwithstanding this, I add that through such desires, when one lingers in those thoughts, there is great danger of present delight: therefore, the confessor must absolutely forbid the bridegroom from dwelling in such desires. On the other hand, it is very probable that it is not, in itself, a mortal sin to delight in the union, whether it has been or will be, with one's wife who is absent (whatever Salmanticenses and Roncaglia may say, who assert that if delight is taken with a disturbance of the spirit), as long as there is always and there is no danger of pollution; for marriage itself makes licit those touches between spouses which, without doubt, cannot be without some disturbance, or at least without the near danger of disturbance, and yet these very Salmanticenses and Roncaglia do not condemn

them as mortal; thus, the delight in the union itself is, in itself, licit; this is the opinion of St. Antoninus, Cajetan, Coninch, Vasquez, Croix, Suarez, Gers, Layman, etc. (2), and St. Thomas also expressly teaches it (3). 52. – It is questioned: 3. Whether it is licit to delight in some intrinsically evil act which happens for the sake of a good effect that follows? It must be distinguished: if the act is formally evil, namely, if it is committed with sin, it is certainly forbidden by all to delight in it. But if it happens without sin, there are those who admit that one can delight in it, as in the cause of a good effect. We, however, with Sanchez, Layman, Croix, Salmanticenses, Roncaglia, etc., say that such delight is always illicit; because although the act was not sinful, it was nevertheless always objectively evil. And this seems not to be further doubted after proposition 15, condemned by Innocent XI, which said: "It is licit for a son to rejoice in the chastisement of his father committed by him in drunkenness, because of the great wealth" that follows from the inheritance. Nor does it matter what St. Thomas says (4): "If, however, it pleases (namely, nocturnal pollution), as a release of nature," sin is not imputed. But this must be understood of purely natural pollution, which comes from nature releasing itself, and therefore, since it is not objectively evil, it is licit to delight in the release obtained through it. On the contrary (speaking per se), it is licit to delight not in the sinful cause, but in the effect that follows from it, such as the release obtained through pollution, or the acquisition of an inheritance arising from murder. It is said per se, because even delight in the sole effect, as say Salmanticenses and Roncaglia, is not without some danger (5). 53. – It is questioned: 4. Whether it is licit to delight in, or to desire, the harm of a neighbor for some good end? Here are two propositions to be not, condemned by Innocent XI, namely, proposition 13, which said: "If, with due moderation, you can, without mortal sin, rejoice in the life of another, and to rejoice in his natural death, and to desire and wish for that death, not because of dislike of the person, but for some temporal advantage." And proposition 14: "It is licit, with absolute desire, to desire the death of one's father, not as the evil of the father, but as the good of the one desiring, because of the inheritance that will come." These were deservedly condemned, because according to the order of charity, the life of one's neighbor must be preferred (1).

(1) Lib. 5. n. 14. et 24.

(2) Ibid. n. 25.

(3) Q. 15. de malo a. 2. ad 1. 7.

(4) In 4. dist. 9. q. 1. ad 3.

(5) Lib. 5. n. 20.

[*Latin ed. p. 86*]

TRACTATE III. ON HUMAN ACTS AND SIN. It is permissible to desire and rejoice in the temporal loss of another, whether it be of goods or

honors, for the sake of the common good, or the innocent, or one's neighbor; thus teach Toletus, Navarrus, Bonaventure, Salmanticenses, Roncaglia, etc., along with St. Thomas (1), who says: "It is possible, with due charity, to desire the temporal harm of another, and to rejoice, insofar as it is an impediment to the evils of another, or of a community, or of the Church." Also, St. Gregory writes: "It often happens that, not out of malice, but for the ruin of our enemy, we may rejoice, and again, the glory of that same person may grieve us, without any fault of envy; for we believe that some are raised up by his downfall, and we fear that most are unjustly oppressed by his advancement." Morals, Book 22, Chapter 22. Therefore, it is permissible (always, however, maintaining the order of charity) to desire, or to be pleased with, the infirmity or death of an impious person, as an example to others, and so that he may cease to cause scandal, or to ruin souls. Thus, it is also permissible to rejoice in the temporal loss of a private individual in order to avoid a common loss. Thus, the Salmanticenses and Roncaglia also say that a father may desire the death of his son, if he justly fears that he will become a disgrace to the family (2). Thus, Sotus, Castropus, Trullenchus, Granadus, Viva, Felix, and Potestas (contrary to Navarrus, Salmanticenses, etc.), permit one to desire the death of another, if he considers that death to be less burdensome to him than a life that is so troublesome due to infirmity, poverty, or another affliction. And this does not seem probable to me; on the contrary, it seems improbable to me that, with Roncaglia and Salmanticenses, the opinion of Azorius and Bonaventure is that it is permissible for a mother to desire the death of her daughter, because she cannot marry her off due to her deformity or poverty, or because the mother is troubled by the man's cause (3).

54. However, to rejoice in things that are only forbidden by positive law, such as to rejoice in meat on days of fasting, etc., is always permissible, or at least not a grave sin. But, on the contrary, if someone, through inadvertence, eats meat on a day of fasting, it is not permissible for him to rejoice in this (4).

POINT III. ON THE DISTINCTION OF SINNERS, I. REGARDING SPECIES, II. REGARDING NUMBER.

55 and 56. On the specific distinction.

57. On the numerical distinction, and on I. the root arising from the multiplicity of acts.

58 to 61. Concerning internal acts.

62 and 63. Concerning external acts.

64 and 65. On II. the root arising from the diversity of total objects.

55. And I. Regarding species, the Doctors first inquire from which roots the specific distinction of sins should be derived? St. Thomas teaches that it should be derived from the diverse vicious objects. Scotus, on the other hand, teaches that it should be derived from the opposition to the diverse

virtues to which sins are opposed. Both opinions are probable; however, as even Tapia, a Thomist, admits, the second opinion is easier for distinguishing the species of sins. Therefore, we say that the distinction of species is derived from two roots, the first from the opposition to diverse virtues, as stated. But since some sins are opposed to the same virtue, such as blasphemy and perjury, which are both opposed to religion, therefore we say that the second root should be derived from the diverse deformity opposed to the same virtue. However, this applies only to the distinction of sins of commission; sins of omission, regarding species, are distinguished only by the objects that are omitted, e.g., the omission of the Mass, and fasting, are both opposed to (1) In 3 Sentences, Dist. 50, q. 1, a. 9, 1, ad 4.

(2) Book 5, v. 21, v. licitum.

(3) N. 22

(4) N. 27.

[*Latin ed. p. 87*]

ON THE DISTINCTION OF SINS, etc. 75 The obedience due to the Church, and the distinctions of species, are different in so far as the Sacred and the Lenten fasts are of different species (1). 56. — Secondly, it is inquired whether a sin, light in its object, can, through some circumstance, become grave in its species? Vasquez and Durandus deny this; but the common opinion held by Suarez, Castrop, Salmanticus, and others with St. Thomas (2), affirms it, because it happens morally, not physically. Therefore, the Doctor (3) says that perjury is a graver act of bestiality (4). And therefore, the aforementioned rule for measuring the gravity of sin in relation to a higher virtue, applies only when sins are great against some virtue, but not when the greatest sin against one virtue is compared to the smallest sin against another virtue (5). 57. — II. Regarding the numerical distinction, we also derive it from two principles: 1. From the multiplicity of morally interrupted acts; 2. from the diversity of total objects. (Doctors doubt regarding the second, but according to our opinion, which we will discuss at the end of this point, no. 64.) And speaking of the first principle, in order to determine when acts of the will are morally interrupted, several distinctions must be made. 58. — First, it is necessary to distinguish between internal and external acts. And regarding internal acts, a distinction must be made between those concerning internal sins (dicta of the heart) which are consummated internally, such as hatred, heresy, wicked desires, and sluggish delight, and those concerning external sins (dicta of the mouth and actions) which are perfected externally, such as blasphemies, thefts, etc. Having established this, we say that internal acts concerning sins of the heart, such as hatred, desires, etc., are immediately interrupted as they multiply; therefore, there are as many sins as there are acts, or acts of the will; as commonly Suarez, Azorín, Vasquez, Castrop, Bonaventure, Salmanticus,

Tournhem, and others, against Canons and Lugo, hold, who maintain that they are not interrupted by sleep, or by distractions, but only by contrary will. But this opinion does not seem sufficiently probable to me; therefore, I say that the penitent should, if possible, explain the number of internal acts to which he gave his consent; if he cannot, at least the time during which he persevered in such a wicked state of mind, explaining at least in general terms whether those interruptions (other than ordinary sleep, etc.) were rare or frequent. For if the aforementioned acts proceeded from one and the same impulse of passion, Lugo, Viva, and Tamburrini (and this seems probable) say that, even if there is some interval, but a brief one, they constitute one sin (6). 59. — Regarding internal acts concerning external sins of the mouth and actions, such as detraction, homicide, etc., these are morally interrupted in two ways: 1. by retraction of the will; 2. by voluntary cessation, namely, if one voluntarily ceases from the wicked purpose; for if, after a voluntary cessation from the purpose, one resumes it again, then a new sin is committed (7). 60. — Therefore, it is certain that internal acts concerning external sins are interrupted both by retraction and by voluntary cessation. But the question is, whether a wicked purpose concerning external sins is interrupted by ordinary interruptions. Some affirm this, as Vasquez, Henno, and Diana, and this opinion is quite probable. But the other opinion is more probable (1) Lib. 5. n. 30, 31, and 32. — (2) 2-2. q. 10, a. 3. ad 1. — (3) 2-2. q. 144. a. 3. — (4) Lib. 5. n. 54 — (5) Ibid. — (6) Ibid. n. 57. — (7) Ibid. n. 58.

[*Latin ed. p. 88*]

76. TRACTATE ON HUMAN ACTS AND SINS. In Salamanca, Vivæ, Roncag., and Concinæ, it is stated that if a sinful intention persists for a short time, repeated actions are not interrupted; however, they are interrupted if the time is prolonged. The opinion of others, that no matter how long a sinful intention lasts, actions are not interrupted, contradicts the common opinion; therefore, I do not find this view probable. As for what constitutes a "long" time in this matter, P. Concina believes it to be one day; Roncaglia suggests two days; others propose four or five days; I, however, believe that the same sinful intention can persist for two or three days, but no longer, because I consider the intensity of concupiscence or passion (speaking regularly) to be such that it can scarcely persist beyond two or three days. Therefore, I say that if a sinful intention precedes an action by two or three days, it can be considered as one sin together with the completed external act. But if someone persists for longer than three days, they must explain the time; and then the confessor will, in a general way, count the number of actions interrupted during that time by any impediment such as sleep, a meal, or distraction, as they are before God, using, for example, the first opinion of Vasquez, etc., namely, that internal acts are always interrupted by any impediment (1).

61. It should nevertheless be noted that this does not apply to acts of the will that originate from the initial sinful intention and continue to produce an effect that leads only to the completion of one external sin; because in that case, no matter how long the sinful will persists, those acts constitute one sin. Therefore, he who intends to kill his enemy, and therefore prepares weapons, sets traps, and then kills him, commits only one sin, even though he may repeat the acts of his sinful will many times over several days; so say all the Doctors, along with St. Thomas (2). Similarly, a thief commits only one sin if he perseveres (even for a long time) in the intention he had from the beginning to steal or not to return what he has taken; because in that voluntary and never-retracted retention, the initial will virtually continues in effect, as strongly taught by Nov. Lugo, Sayrus, Trull., P. Nav., Roncaglia, Diana, Malder, and Salmant. (contra Suar., Bonac., etc.). However, Diana rightly points out that if a thief is sometimes unable to return something and then becomes able to do so again, and does not return it, he commits a new sin; because during the time of his inability, the will not to return did not persist (3).

62. This concerns internal acts of sins that are completed externally. As for the external acts themselves, these are morally interrupted when they do not refer to a completed act, e.g., if someone strikes an enemy several times without the intention of killing him, then all those blows are distinct sins, because each act has its own distinct malice. The same must be said of indecent touches, without the intention of cohabiting. Conversely, it should be noted that external acts are united in two ways, and constitute one sin: 1. if they proceed from the same impulse, as when someone, in the same fit of anger, blasphemes several times, insults someone, strikes, or slanders; or when, with the same intensity of concupiscence, he touches someone indecently several times; so say, in general, Nav., Less., Castropal., Bonac., Concina, Vivæ, Salmant., etc. 2. If the external acts are morally ordered towards the completion of the same sin, as when someone takes up weapons, seeks out an enemy, and then kills him. Similarly, if someone precedes an act of copulation with words, kisses, etc. Therefore, in such cases, it is sufficient to ex- (1) Lib. 5, n. 59. — (2) In 2 dist., 42, q. 1, art. 1. — (3) Lib. 5, n. 40.

[*Latin ed. p. 89*]

ON THE DISTINCTION OF SINS, etc. 77. Does one commit homicide or adultery by merely intending to do so? It is probable that the acts immediately following the touch are not to be considered sins in themselves, unless they are intended to lead to a new act. For, if the touch (and the same applies to any act of lust) occurs immediately after the act and is not directed towards a new act, then it is likely that the touch is merely a complement to the first act (1). However, it should be noted, with Father Viva, and in common opinion (as he himself asserts), that all external actions

used to commit a sin, such as touches and obscene words, and even the journey undertaken, the ascent into the harlot's house, the preparation of weapons for vengeance, and the like, are to be confessed as distinct sins in number, when the intended sin is not carried out; because these external actions are already informed by the malice of the wicked intention (2). 63. Is it the case that if someone intends to steal 100 gold coins, and steals them 100 times, how many sins does he commit? La Croix believes that he commits 100 sins, because each theft has its own particular malice. But it is probable that Holzman believes that it is sufficient to confess the theft of 100 gold coins as a single sin, while the other actions tend to complete the intended theft. However, if the intention is not to steal 100, then certainly all the thefts must be confessed distinctly (3). 64. Thus far, regarding the first principle: let us speak of the second, namely, the diversity of total objects. The question is among the Doctors whether this principle multiplies sins, e.g., if someone kills several people with a single shot from a rifle, does he commit multiple sins? Some deny this, such as Suar., Lugo, Laym., Anacl., Viva, etc. But we, with Azor., Tournely, Concina, Salmant., Diana, Croix, etc., and in common opinion, affirm that the same act, just as it can contain several distinct species of malice, can also have several distinct numbers, and this even against the same virtue; for example, if a married person commits adultery with another married person. Therefore, we say that multiple sins are committed by: 1. someone who kills multiple people with a single shot from a rifle; or by someone who, with a single act of detraction, defames many members of a family; or by someone who, with a single word, causes scandal to many; 2. someone who steals from multiple people in a single instance; but this is not the case if he steals goods belonging to a monastery or a chapter, because those goods belong to the community, not to individuals; 3. someone who, with a single act of will, intends to omit a duty for multiple days, or to fast, or who desires multiple evils, or who desires to approach multiple women, or to have relations with the same woman multiple times, especially if he has relations with her successively (4). 65. If someone denies multiple articles of the Faith, he commits only one sin; for, since there is only one object of the Faith, namely, the revealed truth of God, he is equally unfaithful who denies one article as he who denies them all. Similarly, it is probable, with Azorio, Molina, Lugo, etc. (against La Croix), that someone who defames another before many people commits only one sin, since there is only one right to reputation among all. Also, someone who desires multiple evils for his enemy, e.g., infamy, death, etc., but apprehends them under a single evil reason, namely, as means to his destruction, probably with Cajet., Lugo, Valent., Bonac., Croix, etc., commits only one sin, and it is sufficient for him to confess: "I desired a great evil for my neighbor." But if someone effectively desired to bring about different evils to his enemy, or if he desired specifically and in particular

that those evils should befall him, then he must (1), (2), (3), (4).

[*Latin ed. p. 90*]

78. TRACTATE ON HUMAN ACTIONS AND SIN. All these matters must be confessed distinctly, because they are different sins (1). Salmant, Viva, and Lug with others, say that a confessor who is in mortal sin, and who absolves many successively, commits a sacrilege. But we say, with Bona, Escobar, Concina, Tournely, Croix, etc., that he commits as many sacrileges as there are persons he absolves, because each absolution is a distinct Sacrament. Conversely, Filline, Viva, Busemb, and others, say that a priest who is in sin, and who administers the Eucharist to many, commits only one sin, because there is only one administration and one communion at that time (2). As for how many sins are committed by one who celebrates Mass in a state of sin, see Vol. 3, Appendix a, no. 11, POINT IV. ON MORTAL AND VENIAL SIN. 66. The effects of mortal and venial sin. — 67. In how many ways can a venial sin become mortal? — 68. In how many ways can a venial sin become mortal? — 69. What if someone exposes himself to a probable danger of mortal sin? 66. — A MORTAL sin is that which deprives a person of divine grace, which is the life of the soul, and therefore it is called mortal. A venial sin is one which does not deprive of grace, but diminishes charity, not God's charity towards us, but our charity towards God. St. Antoninus advises confessors not to condemn anyone for a mortal sin "unless there is express authority from Scripture, or from canon, or from a determination of the Church, or from evident reason." Therefore, St. Thomas says, "those who expose themselves to great danger of sin, by readily condemning actions as mortal sins without certainty, and by placing penitents in such a state of conscience, are to blame" (3). 67. — Question 1: In how many ways can a venial sin become mortal? Answer: Three things are required for a mortal sin: the gravity of the matter, full awareness of the intellect; and perfect consent of the will; and because of a defect in any of these, a venial sin can become mortal. And I. Regarding the matter, its gravity must be considered not only in itself, but also from the circumstances, from the whole, and from the intention. Therefore, the matter is not considered small where the smallness does not diminish the offense, as happens in infidelity, simony, perjury, and shameful vice, etc. Furthermore, it should be noted that small matters repeated can constitute a grave matter, when they coalesce with each other, either in themselves, or at least morally in themselves; such as small thefts, small omissions in duty, in Mass, or small meals taken during a fast on the same day. II. Regarding awareness, one can be excused from mortal sin if he is half-asleep, or half-distracted, or if he is so overcome by a sudden and violent disturbance that he does not know what he is doing. III. Regarding consent, it should be noted that perfect consent is not required for mortal sin in those who live a spiritual life, and who, because of their scrupulous conscience, are not

always certain of their consent (4). 68. — Question 2: In how many ways can a venial sin become mortal? Answer: It can happen in five ways: I. By the addition of an end that is itself mortal, e.g., if someone says a mildly dishonest word, but with the end in view of leading someone to a grave sin. II. By the ultimate end, and this is when someone does something that is not in itself mortal, but with such an intention, that he is more ready to transgress a grave precept than to omit it; e.g., (1) Lib. 2. n. 30. v. 1. In confess. et l. 5. n. 50. v. Quær. 5. — (2) Lib. 5. n. 50. v. Quær. 6. — (3) Lib. 3. n. 52. circa fin. v. Bene hie. — (4) Lib. 6. n. 476. v. item, et l. 5. n. 53. ad 66.

[*Latin ed. p. 91*]

ON THE THEOLOGICAL VIRTUES. 79. Who on a festive day is more ready to omit the sacred service than a game? However, there will be merit if he confesses only the will to omit the sacred service. III. By reason of contempt, either formal of the law, or of the legislator, as St. Thomas teaches (1), when someone, out of intention, transgresses a law (even if human), because he does not wish to subject himself to it; or because he does not obey a superior, because he does not wish to be subject to him; but if he does not wish to obey the superior, either out of passion, or because the matter is of little importance, then, says the Doctor, he does not sin out of contempt, even if he repeats the sin. IV. By reason of scandal with respect to the weak, as in the following treatise, n. 28. V. By reason of the proximate danger of falling into grave sin (2). 69. Some authors say that if someone exposes himself to a danger, only probable, of mortal sin, he does not always sin gravely, and it is also probable that he will not fall. But this opinion is rejected by Cardinals Busemb, Croix, etc.; because if it is forbidden for us to use a probable opinion with a danger of causing damage to another, as has been said in treatise 1, n. 21, how much less can we use it with a danger to our own soul. Then, although the fall may be uncertain, the danger is certainly present. This is understood to mean that he sins gravely who exposes himself to danger without a just cause; for this does not apply, according to common opinion (Nav. Roncag. Hurtad. Salmant. Elbel, etc.), to one who exposes himself out of necessity (as will be said of the surgeon and the parish priest in treatise 9, n. 34 concerning the sixth commandment); because then the danger, which was proximate, becomes remote, both because of the necessity, and because of the preservative means which he ought to employ in such circumstances: for although no one will be excused, even if he wishes to employ the same means, who exposes himself to danger out of precise necessity; nevertheless, he will be excused who exposes himself to it for a just cause, while God will help him, who will help him who is in need, not he who acts rashly (3). (1) 2-2, q. 186, n. 9, ad

3. (2) Lib. 5, n. 59, ad 65. (3) Lib. 5, n. 65, v. Quer. hie.

[*Latin ed. p. 92*]

TRACT IV. ON THE FIRST PRECEPTS OF THE DECALOGUE. TRACT IV. ON THE FIRST PRECEPT OF THE DECALOGUE. CHAPTER I. ON THE THEOLOGICAL VIRTUES. 1 to 5. On Faith. — 6 to 8. On Hope. — 9 to 12. On Charity. — 13. On the acts of exercising the theological virtues. 1. The theological virtues, which are Faith, Hope, and Charity, pertain to the first precept. We shall treat of each separately. And I. Faith is defined as: "It is a theological virtue infused by God, inclining us to firmly assent, because of the divine truth, to all that God has revealed, and which He has proposed to us to believe through the Church." It is called 1. a theological virtue, that is, one that regards God, because faith, as well as hope and charity, directly regard God, in distinction from moral virtues, which regard Him indirectly. 2. It is infused by God, because faith is a supernatural gift of God. 3. It inclines us to firmly believe; for the assent of faith cannot be wavering, as was desired by those condemned by Pope Innocent XI, but it must be firm. 4. Because of the divine truth, since the infallible truth (which is God Himself) is the formal object of faith. 5. To all that God has revealed, since all that is revealed by God is the material object of faith. 6. And through the Church, which proposes it to us to believe, because divine revelation is not manifested to us except through the Church, which proposes it; for it is evident through the signs of credibility (which are prophecies, miracles, the constancy of martyrs, etc.) that the Church cannot be deceived, nor can it deceive. Therefore, St. Augustine said: "I would not believe the Gospel, if I were not moved by the authority of the Catholic Church." 2. Therefore, the material object of faith (namely, that which we must believe) is primarily God, and then all other things revealed by God, as St. Thomas says: "Faith, which joins man to divine knowledge through assent, has God as its principal object, and other things as consequentially attached." But the formal object (or the motive by which we must believe) is the truth of God. However, there is a question among the scholastics, whether revelation itself is also the formal object of faith? Juvenal and others say that the truth of God is the formal object, which is the principal reason upon which faith is founded. Revelation, however, is the formal object by which, namely, the means by which we believe. But the more common opinion, held by Habert, Gotti, and Holzman, with Scotus, etc., is that the formal object of faith is the truth of God, and that revelation is only the condition by which the knowledge of those things that we believe is applied to us. 3. But let us come to the matters that pertain to the work of our institute. Some are precepts that must be explicitly believed concerning the necessity of the means, and others concerning the necessity of the precept itself. There is no doubt that it must be explicitly believed that God is, and that He is the rewarder of good, and the just avenger of evil. As for the mysteries of the

Most Holy Trinity, and the Incarnation,

[*Latin ed. p. 93*]

ON THE THEOLOGICAL VIRTUES. 81 Regarding the Passion and Death of Jesus Christ, although there is a probable opinion on both sides as to whether these should be believed out of necessity or by precept, it is certain, from proposition 64, and from the condemnations of Innocent XI, that one who is ignorant of these mysteries is not capable of absolution, either because it concerns the value of the sacrament, or because it concerns the most important mysteries, of very great importance, so that they should be believed in order to attain eternal salvation, and because they are so easily learned that a penitent can learn them without great difficulty, before being granted sacramental absolution. But the stronger reason is that, by receiving the sacrament of penance, which is a communication of the merits of the Savior, the penitent is explicitly bound to believe in those mysteries of the Most Holy Trinity and the Incarnation. Explicitly, they must be known and believed out of the necessity of precept, at least in substance, as taught by St. Charles Borromeo in his Instruction to confessors: 1. The Apostles' Creed; 2. The Lord's Prayer and the Angelic Salutation; 3. The precepts of the Decalogue and of the Church; 4. The sacraments that are necessary for everyone, such as baptism, the Eucharist, and penance; for the others, it is sufficient to have implicit faith, since explicit faith is only necessary for those who receive them. 4. — Sins that are contrary to faith are infidelity and heresy: infidelity, which is threefold: negative, namely, of those who have heard nothing of the faith; positive, of those who, through their own fault, are ignorant of the truth of the faith; and contrary, of those who, either by repelling or by contempt, oppose themselves to the faith that is sufficiently proposed to them. Paganism, Judaism, and heresy are contrary to this infidelity. 5. — Two things are required for heresy: an erroneous judgment of the intellect, and the obstinacy of the will. Therefore, one is not a heretic who merely externally detests the faith, or who merely negatively doubts it, by suspending judgment on some article; because this person does not form a judgment: on the other hand, one is a heretic who affirms that some dogma is doubtful; or who suspends judgment, insofar as he virtually judges that dogma to be doubtful, even though he knows that the Church teaches it. Nor is one a heretic who is disposed to submit his judgment to the Church, because then there is a lack of obstinacy (1). Apostasy is derived from heresy, which is an error of faith by being completely contrary to it, namely, by departing from it. 6. — II. Hope is defined: "It is the virtue by which, with certain confidence, we expect future blessedness, and the means of attaining it, through God's help." The primary material object of hope is that which we ought to hope for, namely, eternal blessedness, which is God Himself to be enjoyed; secondarily, it is divine grace and our good works,

accomplished with God's help. The formal object, or the motive by which we ought to hope, some say is God's mercy; others, divine omnipotence, as commonly held by Thomists; others, the divine promise, as held by Juvenal; and finally, some would say it is divine goodness, meaning that goodness by which He communicates helps to us to attain salvation, which is the same as mercy: which, if anyone were to say that the formal object of hope is the goodness of God, insofar as it is a thing considered, he would be wrong and would live in error, as Continuator Tournely (2) rightly says. 7. — From this, I think it should be concluded that all three of those primary motives, which are enumerated as constituting the formal object of hope, namely, God's mercy and omnipotence, by which God helps us to overcome our enemies (1) Lib. s. n. 17 and 19. — (2) Tract. de Decal. c. s. p. s. de spi concl. s. 6

[*Latin ed. p. 94*]

82 TRACT. IV. ON THE FIRST PRECEPTS OF THE DECALOGUE concerning salvation; these two motives are expressly taught by St. Thomas (1), who says: "The formal object of hope is the help of divine grace and power, and therefore the movement of hope tends towards the good hoped for, which is the material object of hope." And I believe that a third should be added to these two, namely, the divine promise, as Juvenal says, or rather, the fidelity of God in His promises, by which He has promised, for the merits of Christ, to lead us to glory; for, with this promise clearly established, we cannot hope for our salvation with certain confidence. 8.—The opposites of hope are despair and presumption: he sins by presumption who, relying solely on his own merits, or solely on the merits of Jesus Christ, without cooperating with Him, hopes to attain salvation. He also sins by presumption who repeats sins, hoping that God will be as lenient with two sins as with one; or who, through the ease of forgiveness that he hopes for, is led to sin: but not he who sins out of passion, hoping at the same time to be spared. But he who wishes to persevere longer in sins, hoping that later he will reform, does not sin against hope, but against charity towards himself, exposing himself to the danger of eternal damnation (2). 9.—III. Charity is defined: "It is the virtue by which we love God for Himself, and ourselves and our neighbor for God." Therefore, the primary material object of charity (namely, that which we are commanded to love) is God, whom we are commanded to love above all things, as our ultimate end. Secondly, we ourselves, and our neighbor, whom we must love as ourselves, because God commands it. The formal object of charity (namely, the motive by which we are commanded to love God) is because He is infinite goodness, the source and aggregation of all perfections. 10.—A doubt arises: whether the desire to enjoy God is the object of charity? And we answer affirmatively: for charity (as we have said) tends towards God, as towards the ultimate end, and therefore the desire to enjoy Him, which

is our ultimate end, is an act proper to charity, indeed, the most perfect, because enjoyment is charity consummated: therefore, the desire of the Apostles to die and be with Jesus Christ was an act of perfect charity. And this is expressly stated by St. Augustine: "I call charity the movement of the soul to enjoy God for Himself." And it does not contradict to say that the object of charity is the same as the object of hope, which is also to enjoy God; for Habert (3) rightly responds, saying that hope tends towards the enjoyment of God as our good; while charity tends towards His enjoyment for the glory of God; for (as St. Bernard says) when a man enjoys God, he forgets himself, and loves Him with all his strength. 11.—A doubt arises: whether it is an act of charity to love the divine goodness, as it is pleasing to us, when this act seems rather to be an act of concupiscence than of friendship? It is answered by Habert, Gotti, and Juvenal, that if in this we consider our own good as the term of love, then it is indeed an act of concupiscence, looking towards hope; but if we consider the glory of God as the term, loving His goodness as it is pleasing to us, because it helps us to fulfill His will, and to attain the ultimate end, which is to love Him, and for which we were created, then this is the true act of charity. Therefore, St. Augustine said: "You must love so that you do not cease to desire Him (God) for His own sake, who alone will satisfy you." In Ps. 134, n. 11. (1) In quæst. disp. q. unic. de spe.—(2) Lib. 2. n. 20. et 21. v. Hine recto.—(3) Tom. 3. de Spe. o. 2. q. 2.

[*Latin ed. p. 95*]

ON CHARITY TOWARDS NEIGHBORS. 83 12.—To love God for the benefits He has conferred upon us is an act of gratitude, but not of charity, as Habert and La Croix say (1). But Habert rightly says that if one were to consider divine benefits as a communication of God's goodness, a true act of charity would be elicited, loving not merely the good of the recipient, but the goodness of the Giver. 13.—We are bound, both concerning charity towards God, as well as concerning faith and hope, to elicit acts, as is evident from propositions 1 and 7 from Alexander VII, and 6, 16, and 17 from Innocent XI; for, without acts, we cannot exercise these virtues. Therefore, these acts sometimes obligate by themselves, and sometimes by accident. They obligate by accident when necessity urges their elicitation to overcome some temptation, or to fulfill some precept, e.g., confession, Communion, etc. They obligate by themselves (as the Doctors teach) at various times in life: namely, when reason is used; at the end of life, and often in life, at least once a year, as the authors say; but concerning the act of charity, the opinion of those who require it once a month seems more pleasing to me, since it is difficult to observe the divine law if one does not frequently exercise his love towards God through positive acts. However, it is not necessary that these acts be performed reflexively and explicitly with the intention of fulfilling a precept, but it is sufficient if

they are performed actively, even if from another motive, namely, to reject temptation, to elicit contrition, if one wishes to confess. Thus, all acts of charity are acts of conformity to the divine will, and all virtues exercised for God's pleasure. Likewise, acts of faith are prayer, adoration of the Crucifix, making the sign of the cross, etc. Therefore, it is rightly said by Cardinal de Lugo that he who has once embraced the Christian faith (or has lived, I add, Christianly, at least by fulfilling the Paschal precept), should not doubt that he has fulfilled the precept of faith; and the same is to be understood concerning the precept of hope (2). CHAPTER II. ON CHARITY TOWARDS NEIGHBORS. 14. The order of charity.—15. The order of persons who should be preferred.—16. Point I. Signs to be used with enemies.—17. Remission of injury.—18 and 19. Point II. The obligation of almsgiving.—20. Point III. Concerning fraternal correction.—21. When one is excused.—22. The obligation of superiors in this matter.—23 and 24. Point IV. Concerning scandal and how it is given.—25. Whether scandal is a sin against charity as well as against the virtue that is injured.—26 and 27. What if the neighbor is already prepared to sin.—28. Whether, in order not to cause scandal, we are bound to relinquish our goods, and even to omit positive precepts.—29. Concerning the scandal given by women, and concerning comedies.—30. Whether a lesser evil can be suggested.—31 and 32. Point V. When is material cooperation permitted? 14.—CHARITY is ordered; hence it follows that we are bound to prefer God and His grace above all; on the other hand, we are not bound to prefer the good of our neighbor to our own good, unless whenever the good of our neighbor is of a higher order. The order of goods is this: first is spiritual life, after this is temporal life, then reputation, and lastly are goods. Therefore, the temporal life of our neighbor is not to be preferred to our own, but rightly, spiritual life is. However, this must be understood, whenever the neighbor is in extreme necessity; and also in grave cases, with respect to bishops and pastors, according to common sen-

(1) La-Croix, book 2, chapter 147. Habert, volume 3, on Charity, chapter 2, question 4.—(2) Book 2, chapter 6, paragraph 18.

[*Latin ed. p. 96*]

84. TRACTATE IV. ON THE FIRST PRECEPTS OF THE DECALOGUE. Regarding the duty to help those in extreme need (1). When the need of a neighbor is extreme, we are obligated to assist him, even if there is some probable danger of falling into sin, provided that the sin is not morally certain; for in such a case, we can justly hope that God will assist us, as St. Thomas, Suarez, Soto, Silvestrini, Tournely, Palafox, and others teach. (2) However, this must be understood only when there is an equal chance of helping, and no one else is available to provide assistance; and furthermore, the neighbor must certainly be in danger of damnation, for this is what extreme necessity implies. But, as Laym rightly says during a plague, priests are obligated to assist the sick, because it is morally certain that

many are present who, being immersed in sin, will not be able to attain their eternal salvation due to their ignorance of how to elicit perfect contrition (3). 15. The order of persons to whom we should give preference in acts of charity is as follows: in cases of extreme necessity of life, parents should be given precedence over all others; for since we have received life from them, it is just that we should prefer them to others. But in cases of grave necessity, we should assist: 1. the spouse, 2. the children, 3. the parents, but the father before the mother, 4. brothers and sisters, 5. relatives, 6. servants (4). POINT I. ON THE LOVE OF ENEMIES. 16. It is certain that we are obligated to love our enemies, both internally and externally, by showing them at least some common and customary signs of affection, such as we would show to other friends or relatives: for example, by greeting them, responding to their greetings, answering their letters, not avoiding their company, not depriving them of common acts of charity, etc. We said "responding to their greetings"; but if the enemy is superior, or if doing so would cause scandal, or if it is possible without great inconvenience to greet one's enemy and, in so doing, free him from a grave offense, thereby removing the hatred he bears towards us, then (as Tournely rightly says) one is obligated to initiate the greeting. Some authors excuse those who are offended from the sin of not returning the greeting of an enemy if they have recently been wronged by him, as Roncaglia, Tamburini, and Mazzola state (5). 17. It is worth remembering the doubt raised by Doctors regarding whether an offended person is obligated to forgive the injury to the offender. The theologians of Salamanca (6) say that one is indeed obligated to forgive the injury, but not public punishment, because this pertains to the honor of the state. Speculatively, this is the true opinion, but in practice, I have never dared to absolve those who said they had been wronged by their enemies, but wished that justice should have its place, by punishing the wicked; for I have never been able to persuade myself that those who sometimes come burdened with sins, love the common good and justice (not towards other wrongdoers, but only towards their offender) so much that they are completely free from the desire for revenge; therefore, the Doctors say (7) that it is very easy for their love of justice to be a pretext for indulging their own desire for revenge. Nevertheless, I believe that it is right to absolve the offended person, 1. if he already wishes to forgive, but justly demands that he first be compensated for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is

not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender

first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able

to make amends; 2. if he is willing to forgive, but demands that the offender first make amends for the damages suffered, provided that the offender is not so poor that he is in no way able to make amends; 2. if he is willing to forgive, but demands that the otherwise

[*Latin ed. p. 97*]

OF ALMS. 85. One may inflict an injury upon another under the condition that the offended party departs for a distant region, or because he has brothers or sons who are easily provoked to anger, or because the offended party is so dissolute and prone to quarrels that he justly fears, given his own demonstrated weakness, that he will not be able to endure his insults.

POINT II. OF ALMS. 18. In order to determine when the obligation of alms arises, it is necessary to 1. distinguish between extreme necessity and grave and common need. Extreme necessity is when one's neighbor is in danger of life. Grave necessity is when a serious evil is imminent, such as infamy, disgrace, or a just loss of one's acquired status. Common need, finally, is that which is suffered by the poor. 2. It is necessary to distinguish between goods that are superfluous to life and goods that are superfluous to one's estate.

19. In a grave necessity of one's neighbor, we are obligated to assist him from goods that are superfluous to one's estate; but in extreme necessity, even from goods that are superfluous to life; indeed, in extreme necessity, we can assist the poor even with the goods of others, when we lack our own (1). In common need, as St. Thomas, Tournely, Sanch., etc. (contrary to others) say, the wealthy are obligated to give alms to the poor from goods that are superfluous to their estate, according to the precept of the Gospel: "But that which remaineth, give alms" (Luke 11:41); however, there is no obligation to give all that is superfluous, but it is sufficient if one-fifth of the annual income that remains is given, or two in a hundred; as many Doctors probably say; thus Roncaglia, Viva, Tambur, Mazzotta, etc.; and if the income is more abundant, they admit of a smaller fraction than one-fifth. Indeed, Layman allows the wealthy to expend everything that would be given to the poor on some pious purpose (2). However, this cannot be understood of benefices; for those are obligated to distribute all that is superfluous to the poor, or to pious institutions, as will be said in treatise 10, no. 7.

POINT III. OF FRATERNAL CORRECTION. 20. The subject matter of correction is any mortal sin into which one's neighbor is about to fall, or has already fallen, and has not yet been corrected, as rightly say Suarez, Lessius, Salm, Tournely, etc. It should be noted that there is a grave obligation to correct one's neighbor, even if he transgresses the law through excusable ignorance, provided that a benefit is hoped for; and this, according to the more probable opinion of Castropal, Conninck, Sanch., Croix, and Tournely, not only occurs when one sins against natural law, but also against

positive law; for since a law has been enacted prohibiting such an action, that action is already intrinsically evil (3).

21. However, for many reasons, one may be excused from performing this correction: 1. If the sin of one's neighbor is not certain, then in doubt there is no obligation of correction, unless in the case of common and very grave harm, such as murder, and similar things. 2. If there is no hope of benefit, and correction is more likely to be harmful than beneficial; then it should also be omitted, provided that the offender is not in danger of death, or is already in bad faith, or provided that others are not in danger of perversion (4). 3. If another is equally (1) Lib. 2, no. 33. — (2) No. 32, v. Dicunt autem. — (3) No. 34 and 36. — (4) Cont. Tourn. 4r. de Decal. e. n. part. 3. de charit. art. 6. 9. 3. ex concl. 2. cum Hab. et Antoine.

[*Latin ed. p. 98*]

86 TRACT IV. ON THE FIRST PRECEPT OF THE DECALOGUE: Who is suitable to administer correction. 4. It is judged prudently that the offender may reform himself (1). 5. If the occasion and time do not permit; therefore, Doctors sometimes say that the repetition of a fault may be awaited, so that the correction may be more fruitful (2). 6. If correction cannot be administered without grave inconvenience, this obligation is one of charity. Also, St. Thomas (3) teaches that he who, out of some fear or cupidity, omits correction, sins venially, provided that he does not believe that his correction will certainly turn the neighbor away from sin; for then, by omitting it, he would not be excused from mortal sin (4). 22. All are bound by this precept, even those who are subordinate; but superiors are bound more strictly, such as bishops, prelates, pastors, confessors, parents, husbands, guardians, lords, and teachers, because these are bound to correct their subordinates, not only out of charity, but also out of the duty of their office. And they are also bound to inquire into their crimes, when probable indications exist. And regular prelates are sometimes strictly bound not only to denounce grave sins, but also venial sins of their subordinates, when these are such that they cause serious damage to the common good; thus Laym, Bus, Tourn., etc. (5). However, it is denied that the aforementioned superiors are bound to administer correction even at the risk of their lives. Pastors are excepted; for they are bound, not only by the duty of their office, but also by justice (by reason of the stipend they receive), to correct, and to care for their subordinates in spiritual matters, and not only in extreme necessity, but also in grave cases, as the Doctors commonly say (6). And it should be noted here that confessors, by the duty of their office, must correct public sins, even if there is no apparent hope of amendment. And they are bound to this public correction even at the risk of their own harm, as the Salmanticenses say (7).

POINT IV. ON SCANDAL. 23. Scandal is divided into active and passive: Active scandal is defined as: A word or deed that is less than upright, which

gives another an opportunity for ruin. This active scandal can be direct and indirect: It is called direct when it directly induces someone to sin; it is called indirect when some word is uttered, or some evil is done, which is suitable to lead another into sin. There is also diabolical scandal, which is committed when not only is someone induced to sin, but also for this reason is induced, so that he may lose his soul, which is the proper characteristic of the demon. 24. Passive scandal is the very ruin, or sin, into which someone falls. And this is divided into scandal given, which is said of the weak, namely those who fall through their own weakness; and into scandal received, which is called Pharisaical, namely those who fall through their own malice. 25. Here the question is asked: Is scandal a sin against charity, and against the virtue against which the neighbor is induced to sin? There are three opinions. The first says that when the spiritual ruin of the neighbor is directly intended (which is properly diabolical scandal, see above (1) Tourn. loc. cit. with Lisdem, and St. Thomas (2) Lib. 2. n. 38. and 39. — (3) 2. 2. q. 33. a. 2. — (4) Lib. n. 57. — (5) N. 35. and l. 4. n. 13. — (6) Lib. 2. n. 40. v. Strictius et ex S. Th. 2. 2. q. 185. a. 5. — (7) Ibid.

[*Latin ed. p. 99*]

ON SCANDAL. 87 explained), then sin is committed against charity; otherwise, sin is committed only against that virtue which is harmed by the neighbor being led into scandal. The second opinion states that when sin is committed with direct scandal, that is, when one positively leads a neighbor to sin, then sin is committed both against charity and against virtue; but if sin is committed only with indirect scandal, merely foreseeing the neighbor's sin without leading him to it, then sin is committed only against charity. The third opinion, which we maintain with Suarez, Soto, Lugo, Salamanca, Roncaglia, Tambov, and others, and which is expressly held by St. Thomas (1), states that both direct and indirect scandal are sins against both charity and against that virtue. Against charity, because we are bound by charity to provide the neighbor with the opportunity to avoid sin. Against virtue, because every virtue prohibits one from being the cause or occasion of harming others in that virtue (2). 26. — It is questioned whether one sins by scandal who seeks a wicked thing from a neighbor, to which the neighbor is already prepared, e.g., if someone asks for intercourse from a prostitute. We affirm, contrary to the opinion of others, with Sanchez, Cajetan, Navarrus, Bonaventure, Roncaglia, Tamburini, Sporer, etc. The reason is, because (as stated in section 3, paragraph 20), even if it is certain that the external act, speaking speculatively, does not add malice to the internal act, nevertheless, in practice, when the external act is consummated, the malice of the will is always increased, either because of the greater complacency that regularly accompanies the external act, or because of the greater duration of that complacency; therefore, he who sins externally causes greater harm to his soul. Therefore, he who cooperates in

this always sins gravely against charity. Hence, it is probably inferred with Cardinal de Lugo and others, that it is not necessary in sins that have a accomplice, to explain who was the first to tempt; because both the one who induces and the one who consents sin gravely against charity in the act of sin; therefore, induction is nothing other than an aggravating circumstance in the same species, which, according to the more probable opinion with St. Thomas, are not required to be explained in confession, as we will say of the sacrament of Penance (3). 27. — This applies when an intrinsically evil thing is sought; but if the thing requested were indifferent, such that it could be provided by the neighbor without sin, such as asking for a loan from a usurer, or receiving a sacrament from a priest who is in sin, then we say that if there is a cause of necessity, or a notable utility, it is permissible to ask for it; but, once this cause is removed, the one asking also sins gravely, both against charity and against virtue: so Sanchez, Molina, Busembach, Roncaglia, Tamburini, Salamanca, etc. (4). 28. — Sometimes, when there is no grave inconvenience, we are bound to abandon our temporal goods, and even our spiritual goods, provided they are not necessary for salvation, in order to avoid a grave scandal to the weak. But St. Thomas (5) rightly points out that, if the neighbor is warned, and the scandal that results is pharisaical, then we are no longer bound to avoid it (6). But whether, in order to avoid scandal to the weak, there is an obligation to omit positive precepts, such as attending Mass, fasting, etc.? We say it is more probable to affirm, because the natural precept of preventing scandal, namely, the sin of another (it must be noted that it is one thing to prevent sin, (1) 2. 2. q. 45. a. 3. — (2) Lib. 2. n. 45. v. Third opinion. — (3) Lib. 2. n. 46. — (4) N. 47. v. Si autem res. — (5) 2. 2. q. 43. a. 7. — (6) Lib. 2. n. 50. et 52.

[*Latin ed. p. 100*]

88. TRACTATE IV. ON THE FIRST PRECEPT OF THE DECALOGUE: It is preferable to prevent admiration [of something improper] than to obey a positive precept. However, this applies only once or twice; otherwise, it would cause a grave offense, to which charity does not obligate. Cajetan, Navar, Sanch, Azor, Lessius, Salm, etc. (4). 29. Women sin gravely by immodestly exposing their bodies; or, at the very least, they introduce the custom, even if the exposure is not immoderate. St. Antoninus, Navar, Lessius, Layman, and others commonly say this (2). Those who devise or perform notably obscene comedies also sin gravely. The same must be said of painters who paint or publicly display images that are positively indecent (3). 30. We say, with Sanch, Soto, Navar, Molin, Cajetan, Sylvester, Salmantic, etc., confirmed by the authority of St. Augustine (against others), that it is permissible to suggest a lesser evil in order to avoid a greater evil that the neighbor is about to commit; because then the one who suggests is not procuring evil, but good, by suggesting the lesser evil, even if it is of a different kind (4). Thus, it is also permissible to deprive a master

or parent of the opportunity to steal from servants or children who are already inclined to steal, so that they may be better reformed if caught in the act. For this reason, many Doctors permit even offering opportunities to steal, allowing them to steal, in order to prevent future sins (5), as St. Thomas says: "It is not in any way permissible to lead someone to sin; but it is permissible to use another's sin for a licit good" (6).

POINT V. ON MATERIAL COOPERATION. 31. Material cooperation is commonly admitted by Doctors as licit when there is a just cause. It should be understood here that there is a difference between formal cooperation, which occurs when one directly cooperates in sin (as in the case of someone who fornicates), or when one contributes to the evil will of the neighbor who wants to sin, such as guarding the back of a thief or assassin so that he can steal or kill more safely; writing love letters in place of a concubinarius; or bringing gifts to a concubine. Receiving gifts from someone who threatens one's honor. These and similar cooperations are intrinsically evil, because they give the neighbor an opportunity to commit sin, or at least because they foster the neighbor's evil will, and therefore cannot be excused by any reason, not even the fear of death, from mortal sin. On the other hand, there is material cooperation, which occurs when the action itself is indifferent, and the neighbor can use it without sin, but the neighbor, through his malice, abuses it to sin, such as lending money to someone who does not want to pay it back with interest; serving wine to someone who abuses it to become intoxicated; or giving keys to someone who uses them to steal.

32. Therefore, these material cooperations can be licit if three conditions are met: 1. that the act of one's cooperation (as already stated) is indifferent in itself; 2. that one is not obligated by duty to prevent the neighbor's sin; 3. that one has a just and proportionate reason for acting in this way; because then the neighbor's sin does not result from one's cooperation, but from the malice of the one who abuses one's action to sin. Therefore, it is not one's action that is joined to the neighbor's evil will, but the neighbor joins his evil will to one's action; hence, one's action is not (x) Lib. a. n. 5. x. et 53. v. Si ergo. — (a) N. 55. v. Quær. — (3) N. 56. — (4) N. 57. — (5) N. 58. — (6) a. s. q. 78. a. 4.

[*Latin ed. p. 101*]

ON RELIGION, AND THE VICES OPPOSED TO IT. 89 The cause of that sin; but it is only an opportunity which you do not hold, and which may be taken away from you, when you have a just reason to remove it, and thus it is permissible to give wine to a drunkard, always and in other cases, when he would otherwise suffer a very serious loss; thus say Sanch., Tournely, Bonac. Busemb. and others. It is said that there must be a just and proportionate cause, because the closer your action is to sin, the greater the cause must be that excuses you. To judge when a cause is just and propor-

tionate, it is necessary above all to observe what the Doctors say, because, since this depends on the estimation of prudent people, the opinion in this matter will be all the more probable, as we shall also say when speaking of the serious matter of theft, treatise 10, no. 22. Furthermore, when it is a question of harming another, the following rule must be observed: we cannot cooperate in the harm of another, unless when the harm that we suffer is of a higher order, for example, when someone threatens you with death unless you cooperate in the death of an enemy, by providing, for example, a sword; you cannot give it to him, because you cannot positively cooperate in the death of another, in order to free yourself from death. Thus, also, if a thief threatens to take your goods unless you cooperate in helping him rob the goods of another, you cannot cooperate. It would be different if, unless you cooperate in helping him rob those goods, you would suffer a loss of life or reputation, because then, being in a state of extreme necessity, the neighbor is obliged to allow you that cooperation in the loss of his goods, so that you may not endanger your life or reputation (1). Observe also what is said on this matter in treatise 10, no. 56. CHAPTER III. ON RELIGION, AND THE VICES OPPOSED TO IT. 33. On Religion. — 34. Point I. On superstition, and especially on astrology, dreams, enchantments, and lotteries. — 35. On the divining rod. — 36. On vain observances. — 37. On sympathetic powder. — 38. Point II. On temptation. — 39. On sacrilege. — 40 to 49. On simony, and its division. — 50 to 53. On the penalties of simony, and absolution. 33. — The principal virtue of religion is among the moral virtues, and it is defined as: It is the virtue of rendering due worship to God. Two vices are opposed to this virtue: superstition, namely by excess, and irreligion, namely by defect. Superstition contains three species: idolatry, divination, and vain observance. Irreligion contains four other species: tempting God, sacrilege, simony, and perjury. POINT I. ON SUPERSTITION. 34. — Superstition is defined as: It is a vain, or false religion, rendering due worship to God. Therefore, superstition is twofold, of false worship, and of worship of things. False worship is when we offer false worship to God, such as when a layman would celebrate Mass, or when false relics are exposed, or when false visions, revelations, or miracles are feigned, or other inventions are made, in order to increase devotion: all of which are, in their own kind, mortal sins. Or when we offer to God a superfluous worship, such as to hear Mass from a priest of such a name, or with his face turned towards the east (2). But superstition of things is when we offer to things the worship that is due to God (1) Lib. 2, no. 59, and lib. 3, no. 571. — (2) Lib. 3, no. 2, and following.

[*Latin ed. p. 102*]

90. TRACTATE IV. ON THE FIRST PRECEPTS OF THE DECALOGUE: RELATING TO CREATURES. Hence, idolatry is forbidden, such as that of the Gentiles, who worshipped men, animals, herbs, statues, etc., as gods.

Divination, which is the prediction of future events through the agency of a demon, with an expressed or tacit agreement, is illicit. Therefore, judicial astrology, which predicts future events dependent on the free will of men, is forbidden; this is distinct from natural astrology, which observes the movements of the planets to predict rain, droughts, or to discern inclinations or temperaments from the moment of birth. The latter is generally permissible, but is often vain and useless (1). Secondly, it is gravely illicit to constantly believe in dreams, so as to direct one's actions accordingly, or to predict future events, unless there is moral certainty that such dreams are from God (2). Thirdly, the constitutive incantation is illicit, which is a certain prayer consisting of specific and determined words, intended to heal illnesses. This is a mortal sin, especially if the effect is believed to be infallible, particularly if the words are vain, false, or written in a specific, peculiar manner. In contrast, the invocative incantation is permissible, by which one requests health from God, without believing in an infallible effect (3). Fourthly, sorcery, or divinatory lot, is also illicit, namely, when one explicitly or tacitly requests a revelation of hidden or future things from a demon, by taking a certain number or sign by lot. In contrast, the divinatory lot is permissible, which is used for the division of honors, or to settle disputes, or to distribute secular offices among those of equal merit. However, it is not permissible to use it in ecclesiastical benefits or offices (4). 35. Here, it must be noted that the use of a forked rod, called the divining rod, is entirely illicit, from which hidden treasures, metals, veins of water, or boundaries of property are discovered. Some add that this has a natural effect; but how (we ask) can this rod naturally move according to the intention of the one using it, when, if it is seeking water, the rod does not move when it finds a treasure? Furthermore, it has been observed that if someone beforehand protests against consenting to the influence of the devil, even if the object sought is found, the rod remains motionless (5). 36. A vain observance is the use of any disproportionate means to obtain a certain effect, such as the inspection of certain figures, ceremonies, or signs, or certain prayers recited in a particular manner, or mixed with sacred or vain words, or with a certain confidence, in order to acquire knowledge without study, or to be freed from some infirmity or wound. All of these are vain observances, which are gravely illicit. And especially, soldiers, nurses, veterinarians, shepherds, and farmers should be questioned about these (6). 37. Nevertheless, it should be noted what St. Thomas says (7), that when there are no manifest indications of malice in a certain effect, in case of doubt, it should be presumed to come from a natural cause, hence it is very probable that the use of sympathetic powder applied to blood that has flowed is permissible, in order to prevent it from flowing further from a wound, provided it is applied promptly and at a proportionate distance. Thus, neither the use of corals, nor of the hooves of certain animals, seems to be forbidden, in order to avoid a natural fascination of those who possess

that harmful quality, by their appearance alone (1) Lib. 3. n. 10. v. Quær. inde. — (2) N. 9. — (3) N. 21. — (4) N. 11. — (5) Cont. Tournely, tr. de relig. p. 3. c. 2. cum aliis — (6) Lib. 3. n. 14. — (7) 2. 2. q. 60. n. 4.

[*Latin ed. p. 103*]

OF IRRELIGION. 91, they can cause harm. Furthermore, in this type of remedy, which appears harmless, it will be sufficient to remove all scruples if a declaration precedes any diabolical act, stating that one does not consent to it (1).

POINT II. OF IRRELIGION. 38. – IRRELIGION is directed against the reverence due to God. The first species of this vice is the temptation of God. This can be either formal or interpretative. Formal temptation occurs when someone expressly doubts a divine perfection and intends to put it to the test. This is a mortal sin; and when positive doubt is added, it is also heresy. Interpretative temptation occurs when someone neglects natural means and desires that God deliver them from all evil by a miracle: for example, if someone desires to be cured of an infirmity by God, despising medicines; or if someone, putting themselves in a situation of danger, desires that God deliver them from all harm. And this, in itself, is also mortal, unless someone can be excused, either because they did it under a divine impulse, or because they were led to it by ignorance, or because of the triviality of the matter, such as if, neglecting remedies, they expected to be healed from a slight infirmity by God (2).

39. – The second species is sacrilege, which is threefold: personal, local, and real. Personal sacrilege occurs when a cleric, or a monk, or someone bound by a vow of chastity is treated shamefully. Local sacrilege occurs when something is done that pollutes the church, namely, if human semen or blood is spilled in large quantities within it. It is doubtful whether the church is polluted by the hidden emission of semen? Some deny it, and not improbably; but others affirm it more plausibly (3). And the same applies to the use of marriage, and therefore all these actions are sacrileges. It is also highly probable that all indecent touches, glances, and conversations had in the church are sacrileges (4); note that this will be discussed further in chapter 9, paragraphs 22 and 23. Here, it should be noted that no one, regardless of their rank, except for royalty, is permitted to have a rug brought to them within the church; otherwise, they must immediately cease from the divine service, and the ministers of the church incur excommunication by that very act, and the church must be treated as interdicted. This decree was issued by the Sacred Congregation of Ceremonies, which states: "Regarding an abuse that occurred among others who recently arrived in the city, the same Sacred Congregation decreed on August 30, 1701: 'It is not permitted for anyone, except for those of royal rank, to have a rug brought to them within the church; otherwise, they must immediately cease from the divine service; and if this is not observed, the pastors and other min-

isters incur excommunication by that very act, and the church must be treated as interdicted.'" (This is found noted in the bullarium of Clement XI, part 3, decree 1, concerning ceremonies). Then it is added: "And after a report was made, His Holiness (i.e., the aforementioned Clement) approved the decree, and ordered it to be promulgated and put into effect, and affixed in all the city's sacred places on October 3, 1701." All of this is reported by Ferraris, in his Bibliotheca (5), who also reports (ibid.) that, by several decrees of the Holy Roman Church, it is forbidden to give the Gospel to laypeople (even if they are officials) during Mass, as well as to allow them to use the baldachin, and to admit them to the sanctuary.

Notes:

(1) Book 3, paragraphs 20 and 22.

(2) Paragraphs 29 and 30.

(3) Paragraphs 36 and 358.

(4) Paragraphs 458 and 461.

(5) Ferraris, Bibliotheca, volume 3, under the word "Ecclesia," article 5, paragraphs 28 and 29.

[*Latin ed. p. 104*]

92. TRACT. IV. ON THE FIRST COMMANDMENT. It is, without doubt, sacrilege to steal anything from churches, or to take and conceal within them any object entrusted to them for safekeeping. However, it is probable that the theft of any profane object, which does not belong to the church, is not sacrilege; but it seems to us more probable that it is (1). By "sacred place" is understood any place designated by the bishop for divine services or for the burial of the dead, from the roof to the floor (2). Sacrilege in its proper sense is the unlawful handling, or the reception of a sacrament, or of relics, or of images, or of sacred vessels, or of sacred vestments, or of any other object that has been consecrated or blessed, or the profanation thereof. Sacrilege also consists in the misuse of the words of Holy Scripture, twisting them for base or malicious purposes. It is also sacrilege to secretly take away the relics of the Saints, when the Lord is grieved thereby (3).

40. — The third type is simony, which is defined as: a deliberate intention to purchase something spiritual, or something attached to the spiritual, with a temporal price. And to make it clearer, it is a malicious intention, whereby one intends to buy something spiritual, or something attached to the spiritual, such as the revenues of a benefice, sacred vestments, and even the very act of administering the sacraments (4). Simony is of four kinds: mental, conventional, real, and confidential. Mental simony occurs when someone gives a temporal thing with the intention of obliging someone to give something spiritual in return, or vice versa, without any agreement. Conventional simony occurs when an agreement is made, but neither party intends to carry it out. Real simony occurs when the agreement is fully car-

ried out (5). Finally, confidential simony occurs when someone renounces a benefice to another, with the agreement that in the future, he himself, or another, will cede it to him, or renounce it, or with the condition that he will receive a share of the revenues (6).

41. — The gifts that have the nature of a price in the purchase of spiritual things are called "gifts from hand to hand," "gifts from service," and "gifts from speech." A "gift from hand" includes any temporal thing of value, such as a contract for selling or lending, the remission of a debt, or the payment of a debt (7). A "gift from service" is any servitude that is offered. A "gift from speech" is any intercession, even if it is mediated, that is worthy of a price. To give something to a mediator for his labor, or to compensate for a loss incurred, is not inherently illicit, but it is dangerous (8).

42. — Simony is of divine law, and of human law. Simony of divine law is the sale of sacraments and other sacred things. Simony of human law is the sale of offices instituted for sacred things, such as the offices of sacristan, treasurer, prefect of the house, vicars, and advocates of the Church. And it should be noted that simony of human law can occur without it being of divine law (9).

43. — There is also simony of divine law in the admission of someone into a religious order for temporal goods, unless they are given solely to foster good will, or because the monastery is poor, or the applicant is old or infirm, so that he would be a burden to the monastery. Therefore, we say that if the monastery is wealthy, it is not permissible, under these conditions, to accept anything from those who wish to enter, for their support, except for monasteries of nuns, who can always accept dowries, as declared by Clement VIII (10).

44. — It is doubtful (1) whether it is always simony to give a temporal thing for a spiritual one.

(1) Lib. 3. n. 59.

(2) N. 460.

(3) N. 40.

(4) N. 49.

(5) N. 67.

(6) N. 85.

(7) N. 56. et 57.

(8) N. 64. et 65.

(9) N. 68. et 69.

(10) N. 91. et 94.

[*Latin ed. p. 105*]

ON IRRELIGION. 93. Is it permissible to give a temporal gift? According to the more common and truer opinion, it is not permissible when the gift is

given in order to obligate, but rather to conciliate goodwill. Nevertheless, it must be noted, as is stated in proposition 46 by Innocent XI, that it is certainly simony to give a temporal gift (especially when given in a notable quantity) with the principal intention of obtaining a spiritual benefit (1). Commonly, however, Salmanticenses, along with Cajetan, Suarez, Lessius, Layman, Toletus, etc., against Azor and a few others, state that it is permissible to give something temporal, for example, to a bishop, primarily to win his goodwill, and secondarily to obtain a benefice. Furthermore, Roncaglia and the Salmanticenses, along with Sanchez and Bonaventure, rightly point out that when a temporal gift is given solely for the sake of a spiritual matter, or conversely, then a simoniacal intention is easily presumed, at least virtually, as is derived from chapter "Tua nos" on simony; except, as they say, unless the contrary is proven, or is otherwise deduced from the circumstances, namely, from the smallness of the gift, or from the piety, or opulence of the giver (2). 45. — Question 2: Is it permissible to receive something for the administration of the sacraments? There is no doubt that it is not permissible to receive something as a price for the sacred thing, or for the intrinsic labor of the administration itself; otherwise, for an extrinsic reason, for example, if a priest were to celebrate Mass in a distant place, or at an inconvenient hour, or time. And although there is no extrinsic labor, it is permissible to receive something temporal, not as a price, but as a stipend for the support of the minister, who is occupied in the service of others, even if the minister is not poor. This is in common with St. Thomas (3). But is it permissible to administer the sacraments, to preach, or to assist in the choir primarily for a temporal emolument? Some affirm; but others, such as Soto, Suarez, Sylvester, Sanchez, and the Salmanticenses, more commonly and with greater probability deny it, for the same reason mentioned above, because the stipend is not received as a price for the sacred thing, but as a stipend due to the person who is occupied in the service of others. Furthermore, it seems that one cannot be excused from at least venial sin who orders spiritual matters in order to acquire temporal goods (4). 46. — Question 3: Is the sale of benefices prohibited even by divine law? St. Thomas and others affirm this. Nevertheless, the Pope can separate a temporal element from a spiritual benefice, such as the fruits, and thus, with his consent, he can effect that someone, upon paying a certain temporal price, may obtain the benefice (5). 47. — Question 4: Is it permissible to exchange sacred things? If both are purely spiritual, such as a Mass for a rosary, etc., then it is certainly permissible to exchange them. If they are mixed, it is necessary to distinguish, as St. Thomas and the common opinion state: if the temporal follows the spiritual, as the fruits follow the benefice, then the exchange is illicit without the permission of the Pope, or at least of the bishop, as some assert. Otherwise, if the temporal is annexed to the spiritual beforehand, such as money for sacred vessels, cloth for sacred vestments, and other similar things. These can be well sold

and exchanged, provided that only the intrinsic value of the thing is taken into account (6). 48. — Question 5: Is it simony to give something so that another omits a spiritual work? It must be distinguished, and it is affirmed, if the omission is of a matter directly commanded by spiritual authority, and there is an obligation to perform it, as if it were an omission (1) Lib. 3. n. 5. — (a) Ibid. v. Cæterum. — (3) N. 55. — (4) N. 55. v. Quæritur. — VI. — (5) N. 70. — (6) N. 72.

[*Latin ed. p. 106*]

TRACTATE IV. ON THE FIRST PRECEPTS OF THE DECALOGUE: concerning absolution, dispensation, election, etc.; thus from the Decree of the Presbyters concerning similar matters, where it is forbidden to deny absolution to penitents for some temporal advantage, provided that such denial is not unjust or sacrilegious. However, it is to be considered simony if the omission is of some spiritual act dependent on freedom, such as the omission of prayer, the celebration of Mass, or the giving of alms; provided that the one omitting is not obligated by justice to perform such an act (1).

49. — It is doubted (6) whether it is permissible to give something in order to redeem oneself from vexation, or to obtain a benefit or some other spiritual advantage? The Angelic Doctor presents two rules. The first is that if one has acquired a right in a thing, and that right is certain, then one may redeem the vexation by giving something temporal (but not spiritual) (2). This also applies to vexation concerning the possession of a benefice by one who has already acquired the right; for the act of possession is merely temporal (3). The second rule is that if one has a right to a thing, then vexation cannot be redeemed by any price, even if the elector unjustly denies his vote, as the Doctors commonly hold, and as is stated in the Decree of Matthew concerning simony. Nevertheless, this is excepted by Suarez, Castilian Anaclasius, and Elbel, if one has given money to someone who is able only to harm and not to help, so that he may refrain from harming one, even if he does so through evil means, but rather through prayers or gifts, out of malice conceived against one, in order to prevent the electors from conferring a benefice upon one, as Suarez, Anaclasius, and others rightly say; because such vexation is temporal, it is permissible to redeem it with a temporal price. And for this reason, a few years ago, when a certain case was reported to the Most Holy Pontiff Benedict XIV, in which a certain priest named from the diocese of Nusci had been appointed to a canonry in a prominent collegiate church of that diocese, a certain layman, who held power in the episcopal court, demanded a certain sum of money from the aforementioned priest, otherwise he would bring many charges against him, which would disgrace the priest in the court concerning the honor of the canonry. The priest, fearing this, and being blameless in all that was intended against him, promised to give whatever the man impudently demanded, and he gave it; and thus he was not prevented from

receiving the canonry. After many years, the case was reported to Rome by the succeeding bishop, and the Pope said that, if such a provision perhaps required confirmation, he would confirm it, and he decreed that the canon would remain in the same rank; from which it is apparent that the Pope was not entirely certain that the collation was invalid, but he wanted to act for the sake of security, because it had been requested in that way. However, it is to be said differently, as Suarez, Anaclasius, Salm, and others say, if he himself were the elector, who could not only harm, but also help (whatever Castropal may say, who holds that money can only be given to remove the evil intention of that person); because that money would in fact always cause the person's mind to be turned towards one, and consequently, his favor would be sought for the attainment of the benefice. However, in the case where an elector seeks to corrupt other electors through fraud and force, so that they would deny him their vote, then Lessius, Soto, Suarez, Fillius, Sanchez, Salmeron, Croix, Bus, and others commonly say that such unjust vexation can be redeemed with money (4). And this seems to me to be quite probable; because, as P. Mazzotta says, the money is given to him with an express protestation that nothing is asked of him except that he cease the vexation (5). It is unlawful to give money to a competitor, so that he will not compete, if he is justly able to compete (6). On the other hand, it is permissible to give money so that an unworthy or less worthy person will not be elected (7). And likewise, it is permissible to offer money to him who (1) Book 3, n. 97. — (2) n. 93. (3) n. 99. (4) n. 200 and 102. — (5) n. 104. — (6) n. 103. — (7) n. 103.

[*Latin ed. p. 107*]

ON IRRELIGION. It is unjustly denied that the sacraments should be administered, yet a grave reason exists for accepting them, for it is also a matter of redeeming oneself from unjust persecution (1). Gerson, Cajetan, Suarez, Lessius, and Spina, along with St. Bonaventure, Vasquez, and others, generally agree. 50.—The penalties imposed by the sacred canons on simoniacs are as follows: I. For simony in entering a religious order, the community incurs suspension, and those who presume to do so, as the text says (2), incur excommunication from the Pope. However, this is probably only incurred during the profession; indeed, many Doctors say that it has fallen into disuse (3). And it should be noted that all simoniacal elections to a generalate, a rectorship, and to any spiritual office in a religious order are invalid, as stated in the text (4). 51.—II. For simony in the granting of orders (but not the first tonsure), the bishop who ordains, and the intermediaries, incur excommunication and suspension reserved to the Pope, and are forbidden from entering the church. Those who are ordained, in addition to excommunication and suspension of orders (but probably only for the orders received through simony), are prohibited from advancing to higher orders. However, this does not apply if the simony was commit-

ted by others, unknown to the ordained person (5). 52.—III. For actual simony in benefices, all presentations, elections, etc., are invalid. Therefore, a simoniac cannot retain a benefice, nor can he receive the fruits thereof (6). And this is true even if the beneficiary, unknowingly, incurred this penalty and committed the simony, for example, if he was treated by a third party, as stated in chapter Nobis, on simony. However, exceptions are made in the following cases: 1. If the beneficiary contradicted and then, through ignorance, accepted the benefice. 2. If the third party committed simony with the intention of rendering the beneficiary incapable of holding the benefice. 3. If he had peacefully possessed the benefice for three years, as the Doctors generally state. Except for these cases, the recipient of a benefice through simony, in addition to papal excommunication by the bull of St. Pius V, issued in the first year of 1566, is permanently rendered incapable of holding that benefice and any other benefices (so that, according to Extravagantiae Pii IV, In sublimi, if he refused to relinquish the benefice, he could not be absolved), and is also deprived of any benefices he had previously held. However, according to the more common and probable opinion held by Navar, Suarez, Sanch, Lessius, Laym, Anacl, Ronc, Croia, etc., these penalties are not incurred unless the simony is complete on both sides; and this is the opinion of the curia, as testified by Navar and others (7), except in the case of confidential simony, in which case it is sufficient that a temporal payment was made, according to the bull of St. Pius V (8). And although the simony is complete, these two penalties of deprivation and incapacity are not incurred unless after a condemnatory sentence, as is commonly held by Bonac, Castrop, Sanch, Laym, Filliuc, etc. (9). The bull of Pius V does not apply, because (as the aforementioned Doctors say) it is understood to apply to the external forum, where it is said that whoever is convicted; at least it is received in that sense. 53.—IV. For confidential simony, in addition to the penalties imposed against actual simony, the deprivation of other benefices, even those previously held, is also incurred; but probably not before a declaratory sentence of guilt. It should be noted that, according to the Council of Trent, session 24, canon 18, (1) Lib. 3, n. 1053, v. Quær. 5. — (a) C. 1, Extr. de simon. — (3) Lib. 3, n. 108. — (4) Extr. 2, de simon. — (5) Lib. 3, n. 109 and 110. (6) Extrav. v. de simon. — (7) Lib. 5, n. 106. — (8) Ibid, v. Nota id. 3. — (9) N. 118, v. Quær. 3, and Quoad autem.

[*Latin ed. p. 108*]

96 TRACT IV. ON THE FIRST PRECEPT OF THE DECALOGUE. Since it is established that synodal examiners who accept something from those seeking benefices are rendered incapable of obtaining benefices themselves, and that both those who give and those who receive are unable to be absolved from simony, unless they relinquish the benefices; it follows that those aforementioned are, by this very act, and indeed before

any judgment, deprived of all benefices, even those which they may have obtained through simony before their collation. Finally, it should be noted that: 1. These penalties are incurred only for simony in matters described, namely, in the matter of entrance into religious orders, ordinations, and benefices, but not in the sale of sacred things, or ecclesiastical jurisdiction, or non-collated chaplaincies (1). 2. The price accepted for the simoniacal collation of benefices, or ordinations, or sacraments, if it exceeds what the minister could legitimately demand for his support (speaking of the administration of sacraments, as mentioned in n. 46), must be returned to the one who gave it before the delivery of the spiritual thing; if, however, it was given afterwards, then, although it is probable that it can be returned to the same person, it is more probable that, according to St. Thomas, it should be returned to the Church, or to the poor. As for the fruits of a benefice acquired through simony, these must be returned to the Church, and it is probable that they can be given to the poor, or to the successor in the benefice, and it is also possible to obtain a remission from the Pope. That which was received for admission into a religious order is not to be returned except after a judgment, and in the meantime, it can be retained for the sustenance of the community (2). 3. Those who have incurred excommunication and suspension for the collation of ordinations, or benefices, or for admission into a religious order, if they are public, can only be absolved by the Pope; but if they are private, then even bishops can absolve them, according to the common opinion, as stated in the Council of Trent, Session 24, chapter 6, "Liceat." The theologians Salmanticensis, Lessius, and Castropalus say that even mendicants can do so, adding that the bull of Pope Pius V, which revoked all privileges of the regular clergy with regard to this matter, is not accepted; but here I cannot understand how the revocation of privileges requires acceptance, since previously the regular clergy could do so, because it so pleased the Pontiffs; therefore, if that jurisdiction was taken away from them by the same authority, by what power can they claim such a jurisdiction for themselves? See the aforementioned, volume 3, treatise 20, n. 17, near the end. But whatever may be the case, it is certain that, according to Clement VIII, the faculty of absolving seculars from real and confidential simony was taken away from the regular clergy outside the city, and within Italiam. See volume 3, treatise 20, on privileges, n. 101. Regarding the inability to hold other benefices, the bishop can grant a dispensation, provided that the crime of simony has not been brought before a court of law, and provided that it is not confidential (3). As for whether the bishop can grant a dispensation to someone who obtained a benefice through simony, it is answered that if a benefice (whether it be a curacy or a simple benefice) was knowingly received through simony, the bishop cannot grant a dispensation; but if the simony was committed by a third party, and the beneficiary received the benefice unknowingly, then the bishop can grant a dispensation, but

not before the renunciation of the benefice; so say Navar, Sanch, Salm, etc. (4). As for perjury, which is the fourth species of irreligion, it will be discussed in the following treatise, chapter 2. (1) Book 3, n. 112. — (2) Nos. 114 to 116. — (3) No. 127. — (4) No. 118.

[*Latin ed. p. 109*]

OF BLASPHEMY. 97 TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. CHAPTER I. ON BLASPHEMY. 1. When Blasphemy is Committed. — 2. Of Cursing Creatures. — 3 to 11. Of Cursing the Dead. 1. — BLASPHEMY is committed either by attributing some divine attribute to a creature, as if one were to call a demon "holy," etc., or by uttering some reproach against God, or the Saints, or against holy things, or against holy days, as if one were to curse a Saint, saying: "May Saint N. fare ill," or "May evil befall the Church." "A curse upon Easter, upon the holy Sabbath," etc., which the uneducated commonly express with the word: "Mannaggia." It is also blasphemy to say: "Against God's will, this will happen"; or "If the Blood of Christ!" (in a fit of anger towards the Lord): "God does not act justly." And this last would also be heretical blasphemy; and therefore, if seriously uttered, he who hears it should be held accountable to denounce it within a month. Blasphemy is also committed by deed, for example, by spitting towards the heavens, trampling on images, crowns, etc. 2. — However, to say "Atta Sancti N.," is not blasphemy, nor even "Potta"; for this word in our idiom simply signifies an indignant interjection. Nor would it be blasphemy to say "Mannaggia santagata," "May Santagata fare ill," "Sanctusermus," "Sanctusmenna," etc., when the place "Santagata" is understood, and not the Saint. Nor is it blasphemy to curse creatures, namely, fire, wind, rain, etc., unless the word of God is added, or unless those creatures are those which have a special relationship to God, or in which divine power shines in a particular way, such as the soul, heaven, etc. I believe the same should be said of cursing the world, provided that the world is not understood in the perverse sense in which it was understood by Jesus Christ, when He said: "Wonder not, brethren, if the world hate you." "I have conquered the world," etc. 3. — To curse someone's faith is not, in itself, blasphemy, unless the faith of Christ, or holy faith, is expressed; because otherwise, the word "faith" can also be understood as human faith. Nor is it blasphemy to curse the dead, unless the intention specifically refers to the souls of purgatory, or unless one curses dead Saints or Christ. I have already dealt with this point in my Moral Work (1); but since this point has not yet been sufficiently treated by other authors, I wish to treat it here with as much clarity as I can, especially in order to satisfy a certain anonymous author, who in a certain letter of his has raised some objections. 4. — Therefore, I affirm that cursing the dead is not, in its enough nature, blasphemy, neither absolutely nor relatively to those who

utter those words. First (1) Book 3, n. 150. 7

[*Latin ed. p. 110*]

98 TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE: It is not, in itself, blasphemy to speak of the dead, since the word "dead" is, properly speaking, a privative term, signifying those who are deprived of life, who no longer exist in the present. In this sense, the word "dead" does not denote either the soul or the body. Therefore, speaking strictly from a philosophical standpoint, he who curses the dead does no injury to anyone, since he is cursing one who does not exist. 5. Someone might say: But the word "dead" is taken here not as a privative term, but as an analogical one, that is, as one that can refer both to the body and to the soul of the deceased. I reply first that he who speaks in this way is already speaking of the relationship in which the mind is directed towards something, but I am speaking of what the word "dead" itself signifies. But, granting that the word is to be understood as an analogical term: I reply secondly that, under this term, the dead primarily, and in the most direct sense, as the philosophers say, refers only to the body, which alone can be said to be dead; the soul, however, can only be understood in a figurative sense, by saying, for example, "the soul of the dead," because it is sometimes the form of that body to which it gave life. But, assuming that the word "dead" primarily refers to the body, and less directly, and, to put it better, improperly denotes the soul; when someone speaks of the dead, speaking in themselves, they do not mean the souls of those dead, but their bodies. In order to understand the souls, it is necessary that either the speaker intends to speak of souls, or that other words in the discourse denote the souls, as is written in the book of 2 Maccabees, 12:46: "It is therefore a holy and wholesome thought to pray for the dead, that they may be loosed from sins." In this passage, the word "pray" already signifies that the discourse is directed towards the souls. 6. Therefore, speaking in itself, cursing the dead is not blasphemy, because it is not directed towards the soul. Let us now see whether it is blasphemy at least in relation to the mental state of those who utter it. And this too we deny; because those who curse the dead ordinarily do not consider the souls of those dead. Here, however, the author of the letter burdens me with accusations and insults, claiming that I do not know how to distinguish between the abstract and the concrete. "Abstract," he instructs me, "is that which signifies the form separated from the subject, as is beauty, whiteness, etc. Concrete, on the other hand, signifies the subject with the form joined together, e.g., a beautiful man, white paper, etc. Therefore, he says, the word "dead" signifies a man who once consisted of a soul and a body, but now denotes a body and a soul separated. And from this, he concludes that when one curses the dead, one curses not only their bodies, but also their souls. 7. I reply: I do not say that he who curses the dead considers them as abstract, that is, as forms without a subject:

but I say that he does not consider the soul which they once had. It is one thing to abstract, which is to consider the form without the subject: it is another thing to disregard, which is to consider the subject precisely apart from some quality or circumstance with which it can be associated. It is certain that the dead in the present are not the same people who previously existed in life. Then they were whole persons who consisted of a soul and a body joined together; but now, indeed, their souls and bodies exist, but they are separate substances. Therefore, when cursing people who are dead in the present, it does not necessarily curse their souls, unless those souls are specifically expressed or understood. 8. But let us grant to the author of the letter that he is trying to maintain—

[*Latin ed. p. 111*]

OF BLASPHEMY. 99. This is the point: namely, that to curse the dead is the same as to curse the living. I ask: therefore, does anyone who curses the living always sin mortally? All the Doctors, Cajetan, Sotus, Molina, Prado, Azor, and others apud Salm., (1) with St. Thomas (2), say that cursing one's neighbor is a mortal sin when it is formal, that is, as Cajetan explains, when one, with a wicked intention, wishes evil for one's neighbor and imprecates it upon him (and indeed, a great evil). Otherwise, when the curse is only material, that is, pronounced without a wicked intention: and yet, in the living, there certainly are a soul and a body. And why is it not mortal? Because he who curses does not always intend to curse the soul of his neighbor, nor to inflict injury upon that substance in which the image of God shines forth, but he disregards the soul, and therefore does not sin lethally. He who curses rational creatures (as St. Thomas teaches in the aforementioned passage, a. 2, and all others), if he considers them as creatures of God, sins gravely and commits a true blasphemy; otherwise, if he disregards considering them as such, and curses them only as creatures considered in themselves, and yet all of them are creatures of God. Note that St. Thomas himself admits this distinction. Therefore, just as he who curses the dead, if he curses them considering their souls, sins mortally; otherwise, if he curses them, without having any special regard for their souls. 9. — To say that all who curse the dead intend to attack their souls, I and many other confessors, having been taught by experience, have learned this by questioning penitents. All the more so, because those who curse the dead do not intend to harm the dead, but the living, to whom they direct their curses in a manner of injury. But this is the matter of fact; the confessor can be certain of this, and free himself from doubt, by diligently questioning penitents. 10. — To say that, even if one understands that he is cursing only the bodies of the dead, he cannot be excused from mortal sin, because of the respect that the Church shows towards the bodies of the deceased, by offering incense, sprinkling with holy water, and burying them in sacred ground. I do not know whether anyone can persuade himself with this

reasoning that cursing the dead is mortal. Briefly, I answer, and I say that the aforementioned functions are not acts of religious worship or honor towards the corpses of the deceased, but are certain ceremonies which the Church also applies to the living. Therefore, if the honor paid to the deceased is not greater than that shown to the living, there will be no greater injury. But why (the author of the letter adds) do the laws punish more severely those who are violent towards corpses? I answer: They punish not because of a greater injury, but because of a wicked intention, which is manifested in that act, and this crime is also punished in those who kill infidels and heretics. Otherwise, if it were of itself a grave insult to the bodies of the deceased, those who inflict such injuries would be guilty of the same crime, and would be treated differently from those who divide them up for medical observations. But what I conclude is that cursing the dead is not blasphemy, nor is it a mortal sin. And three authors (mentioned in the work) who have written only about this matter, felt the same. I add that, in order to be more cautious, I wrote to several learned men in Naples, where there is a flowering of doctors, and to three congregations of Missionaries, namely, that of Father Pavone, of the archiepiscopal, and of St. George, and they all wrote to me, agreeing with my opinion. Furthermore, Father Sabbatinus (1) De rest. c. 4. n. 27 and 28. — (2) a. 2. q. 76. a. 3.

[*Latin ed. p. 112*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. (Then a pious worker, now the distinguished prelate of L'Aquila) replied to me that all pious workers, both present and past, had felt the same way. Furthermore, I received as certain information that a messenger from Naples, after the works had been printed, transmitted both my letter on this matter, as well as the letter of my opponent, to Pope Benedict XIV, who requested that the Reverend Thomas Sergio, a pious worker and consulter of the Holy Office (who has now passed away), examine the controversy, and that the Pope himself expressed his opinion to him, namely, that cursing the dead is not a true blasphemy. And subsequently, another pious worker, who now resides in Rome, affirmed to me that the Pope, having learned the opinion of Father Sergio, and seeing the persistent difficulty in the matter, showed that he himself also held the same view.

Therefore, given this, I cannot understand how it can be that some can not only doubt, but also be certain, and even preach without scruple, that cursing the dead, in general terms, is mortally sinful and a true blasphemy, when all Doctors, and even those who profess a stricter opinion, such as Father Concina and others, teach that it is not a sin that is punishable by mortal sin, unless a clear text of Scripture, or evident reason, suggests it. Saint Raymond wrote (1): "However, I advise you not to be quick to judge mortal sins where it is not established by certain Scripture." And Saint Antoninus said (2): "Unless there is an explicit authority from Holy Scrip-

ture, or a canon, or determination of the Church, or evident reason, it is dangerous to determine that something is mortal; for if it is determined that something is mortal, and it is not, the one who does it will sin mortally, because everything that is against conscience builds towards hell, etc."

RESPONSIVE LETTER. Against the apologetic letter written in defense of the Dissertation which appeared on the abuse of cursing the dead.

"Above all, I considered it necessary to indicate that, since a certain dissertation had appeared against those things which I had written on this point, and I had promised to respond briefly, and that once and again I would satisfy those who presented arguments to me, I would no longer write about this matter; so that there would be no endless progress, and so that I would not repeat the same things that I had already written; but I said that I only intended to respond (as I have done) to two doctrines of Saint Thomas which were being presented to me anew. And I also indicated that I had resolved in my heart to write nothing further on this controversy (because it seemed to me that the matter was sufficiently settled), unless I had been completely persuaded of the truth by my opponent: for then I would have no difficulty in abandoning my opinion, and I would not be ashamed to indicate this in all things through public writing, as my mind has not shied away from doing in some of my own opinions, which, when I realized that they were not in accordance with reason, I readily retracted."

"Nevertheless, after my response was given, another apologetic letter was circulated in defense of the aforementioned dissertation, in which the author contended that cursing the dead is, in itself, mortally sinful; to this letter, despite the resolution I had made not to respond further, I am now compelled to respond with another letter. And this only (r) Book 5, chapter 2 on penance.—(a) Part 1, second part, chapter 11, second article.

[*Latin ed. p. 113*]

ON BLASPHEMY. 101 "Here I add, in which is briefly contained both the reply which I had given to the dissertation, and the reply to the defense of the dissertation." "To the Most Reverend Abbot, Father Bartholomew de Marco Basiliano. Most Reverend Father, and most esteemed Lord, WHEN a certain dissertation on the malediction of the dead, and with it my brief reply, had recently been published, another apologetic letter was written by several people in defense of the aforementioned dissertation. When that letter reached my hands, and I read it carefully, I pondered for a long time whether or not to reply. On the one hand, I had adopted the plan of not responding further, wishing to avoid proceeding to infinity. On the other hand, it seemed advisable now to reply again, as my friends urge me to do; then, because in my previous reply a certain error occurred, from which I intend to retract, although it has nothing to do with our matter, as you will see from this second reply; and then, because in the aforementioned apologetic letter, the opponent presents new objections, in order that am-

biguities may be removed, I considered it necessary to provide a second reply. Therefore, I have taken care to bring this second reply to you, and I ask two things of you: first, that you read it with all the attention you can, adding, subtracting, or correcting whatever you think is necessary; second, that you frankly reveal your opinion to me, whether it seems advisable to you to have it printed, since, on the one hand, I dislike arguing with a man and with others of his order, which I hold in the highest regard (although I know that there are some among them, perhaps not the least learned, who adhere to my opinion). On the other hand, I believe that it would contribute greatly to the glory of God, who glories in the salvation of souls, to dissuade the hearts of the faithful from the opinion that the aforementioned malediction is mortal, when it is not so. Please excuse me if you notice that some things which were already mentioned in the previous reply are repeated here. I considered it best to present everything together before the reader's eyes, as he reads the objections which the opponent now presents to me anew. In the dissertation, he attempted to prove that cursing the dead is a lethal sin and a true blasphemy, for two reasons: 1. because the bodies of deceased faithful are sacred; 2. because the aforementioned malediction cannot be separated from reference to the souls. In the reply to the dissertation, I said that I had already answered those objections twice, and therefore, in order not to always repeat the same things, I did not wish to answer everything that was presented. Nevertheless, I said that I could not help but answer the two authorities of St. Thomas which were newly presented. The first text is taken from 3. p. qu. 8. art. 2, where the Doctor says that Christ has the right to raise the bodies of the faithful because of the dwelling of the Holy Spirit. And the author of the dissertation intends to prove the same thing from elsewhere, namely, from the sacramental reason of communion, by which the faithful, while they live, are strengthened; and from these two reasons, he concludes that the bodies of the dead should be considered among the sacred, so that they should be venerated with a cult derived from the virtue of religion. But if these reasons (I reply) proved that the bodies of the dead are sacred,

[*Latin ed. p. 114*]

Tractate V, concerning the second precept of the Decalogue, some argue that it necessarily includes the bodies of the condemned among the sacred, since the Spirit of Holiness sometimes dwelt within them, and they were incorporated with Jesus Christ through the Eucharist. They claim that these qualities are subsequently lost through sin. Therefore, I conclude that whenever I am not certain, by the authentic testimony of the Church, that the soul of a deceased person enjoys eternal glory, and whenever the Church does not render to him the honor due to him in the context of sacred worship, as we will explain later, I am not permitted to consider that body as sacred.

Furthermore, if the bodies of the deceased are considered sacred because of the Eucharist they received and because of the dwelling of the Holy Spirit, it must also be said that the bodies of living faithful are to be venerated as sacred, so that any injury or curse inflicted upon the body of a living non-believer would be considered a grave sin against religion. But this is contrary to the explicit teaching of St. Thomas, as we will soon see.

To say that the bodies of the deceased are sacred because of the rites with which the Church treats them, since, for example, she bestows the benefit of sacred burial, decorates them with processions and blessings, burns incense, and even, as the adversary says, formerly used to place the sacred Eucharist upon the chest of the deceased: I do not know why these rites should be called acts of sacred worship, when it is known that, in previous centuries, even during a time when the Church enjoyed peace from the persecutions of the infidels, the bodies of faithful deceased were buried in fields and on roads, as testified by Thomas Aquinas and Calmet. Indeed, more councils forbade the burial of corpses within churches.

If, in later times, the custom arose to bury them in a sacred place (as St. Gregory affirms), it was so that those nearby, in the sight of the tombs, would more often remember the souls of the deceased and assist them with their prayers: "It is beneficial to the dead," (these are the words of St. Gregory), "if they are buried in a church, because their relatives, being reminded of them by the very sight of the tombs, will more frequently pray for them;" lib. 3, Dial., cap. 50, 52, and 53. And St. Augustine says the same in his book "De cura pro mortuis." The blessings with lustral water, Gavantus and Durandus say, are applied to corpses in order to free them from demonic infestation. And for the same reason, they are incensed, as Innocent III writes in lib. 2, de myst. Missæ, c. 17. And for the same reason, the Holy Eucharist was placed upon the chest of the deceased, as St. Gregory himself asserts in lib. 2, Dial., c. 24. Although, finally, this was condemned by the councils in the 4th, 6th, and 7th centuries, as P. Vestrini recounts in his theological writings, vol. 3, epistle 53; just as it was forbidden to place the sacred Eucharist in the foundation stones of churches, or to apply it to the afflicted or to the wounds of the sick; as also to anoint the forehead, eyes, etc., with consecrated blood, a custom received among the ancients, as reported by St. Cyril and St. John Chrysostom.

These things make it clear that these pious acts (which derive more from simplicity than from religion) are not to be judged as sacred in themselves, but are simply used to achieve the good effects that the faithful hope to obtain from their use.

Now, speaking of the rites with which the Church commonly uses today in burying corpses, this is what Spendanus writes (lib. 1, p. 2, cap. 15, sect. 3, De sacr. cœmet.): "How great is the power of the cross with which they are marked and adorned, and of the blessed water with which they are

sprinkled, and of the incense..."

[*Latin ed. p. 115*]

OF BLASPHEMY. 103 "In order to provide sufficient grounds, both to prevent further evils, and especially to repel demons and dissolve their and sorcerers' deceptions, I would readily present numerous testimonies and examples from the Fathers."

And in chapter 2, section 1, "The aspersions are applied to the bodies of deceased faithful, because those who die piously are the sweet savor of Christ; and to further signify that the deceased have left behind the fragrance of good works, etc.; through incense, so that it may be judged that they believed themselves to be going to immortality through death."

Furthermore, Stephen Durandus, book 1, chapter 9, number 9: "Moreover, incense is offered for the reverence of the place and of the divine office, etc." Also, John Belato (in the explanation of the divine office, chapter 161): "The body is placed in a tomb; and blessed water is added, and Prüm with incense: The blessed water, so that demons may not approach the body. Thus, to remove the stench of the body. Prüm, to indicate that that land cannot be returned to common use."

Furthermore, William Durandus (in the Rational, book 7, chapter 35): "Blessed water is placed, so that demons may not approach the body. Thus, to remove the stench, or to indicate that the deceased has offered to his Creator the acceptable fragrance of good works, or to show that the deceased benefits from the help of prayer."

From this, it is clear that all the aforementioned rites which the Church applies to the deceased are not sacred worship, with which she intends to honor corpses, but mystical ceremonies. Note also that the Church denies these rites to those who, being bound by the bonds of excommunication or interdict, have died from this life, even though, before breathing their last, they had given certain signs of repentance and of their salvation. Therefore, the Church does not apply these rites to the deceased because she believes them to be temples of the Holy Spirit, but because she desires to preserve communion between the living and the dead.

Another passage from St. Thomas, which is objected to me, is taken from the same 3rd question, 25th article, 6th part, where the Angelic Doctor says that the relics of the saints are to be venerated, because they were the temple and the organs of the Holy Spirit, who dwelt and worked in them: and also because they are sometimes to be configured to the body through the glorious resurrection of Jesus Christ. From this, the opponent infers that cursing the bodies of the deceased is a true blasphemy, because they have already been temples and organs of the Holy Spirit. But if this reason were valid for the deceased (and I say again, equally), it would apply even more to the living; indeed, much more strongly, for the living are, in fact (if they

live in charity, as we must devoutly presume), living temples and organs of the Holy Spirit.

But St. Thomas, 2nd part, question 76, article 3, along with the common opinion of theologians who follow him, Cajetan, Soto, Azor, Prad, Serra, Mol, Lugo, Layman, Trullench, and all, say that a curse or imprecation pronounced against a person does not exceed venial sin, whenever the curse is not formal, but only material, that is, without a wicked intention. Let us refer to the entire text of the Angelic Doctor, so that it may not be imputed to me that I have presented only a fragment: "A curse is that by which evil is pronounced against someone (note) either by commanding or by wishing. But to will, or to move someone to evil, is contrary to charity, by which we love our neighbor, desiring his good. And thus, according to its kind, it is a mortal sin, and the more grievous, the more we are bound to love and revere the person to whom we curse. Therefore, it is said (Leviticus 20:9): Whoever curses his father or mother shall die." However, the word of a curse pronounced may be venial, either because...

[*Latin ed. p. 116*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. » The smallness of the evil that one wishes upon another, or even when uttered out of affection, even if from a light impulse, or a jest, or by surreptitious means, when words are spoken; for sins of the tongue are considered most of all from the intention. » Therefore, when my adversary attacks me, and repeats the words of the Angelic Doctor to me with emphasis, according to his manner, it is a mortal sin for him to speak to me in this way, for he provokes me: "Pay attention, or do not pay attention?" However, I believe that I understand these things, and indeed, that no one should understand the text of St. Thomas in any other way than I do, namely, that to curse men is a mortal sin when the curse is formal, which is said to be such when one, with a wicked intention, desires that evil befall them for which they curse, or when one incites others to inflict evil upon them, as the Angel or Angelic Doctor explains in article 1, by the example of a judge who moves the ministers of justice to carry out an unjust punishment on an unjustly accused person. And this, St. Thomas says, is a mortal sin in itself, because, according to him, it is contrary to charity, by which we love our neighbor, and we desire good for him. For just as charity compels us to desire good for our neighbor, so it forbids us to desire evil for him, and to incite others to inflict evil upon him. Speaking of verbal curses (of which we speak only in the present case), St. Thomas says that they do not exceed venial sin, either when the evil that one curses is small, or when there is a lack of a wicked intention (which is called the material curse), namely, when one utters a curse in jest, or without full deliberation. And finally, he confirms this for this reason: "Because sins of the tongue are considered most of all from the intention." The same is taught by Cajetan,

in his commentary on the cited question 76, article 1, saying: "Note from the first article what is properly a curse, namely, to say evil, as evil, to someone with the intention." And from this it follows that a curse is distinguished into a formal curse and a material curse, and that sometimes it is a mortal sin, and sometimes a venial sin; for a formal curse is of its own kind mortal, as is evident; but a material curse, if it is made optatively, is not mortal; but if it were made imperatively, it could be mortal. And the reason for this difference is that, besides the optative intention, the one who curses does not harm anyone; because neither from the intention, nor from the action of the minister who follows, although not from his own intention. I have said "of its own kind," because, due to the imperfection of the act, either on the part of the object, as when one desires or commands a small evil, or on the part of the one acting, as when one curses out of anger, or out of jest (as St. Thomas adds), although he intends evil, because he does not tend towards evil with the consent of reason, he falls short of the perfect reason of sin, and therefore it is not mortal. » Therefore, following the teaching of St. Thomas, Cajetan, on the one hand, says that a formal curse, namely, from the intention, is of its own kind mortal, and becomes venial either because of the imperfection of the act, namely, the consent of reason, or because of the smallness of the evil that is desired; on the other hand, he says that a material curse is only venial, namely, besides the pronounced optative intention, that is, in the optative mood, or by words expressing desire, taking it optatively adverbially, to distinguish it from the imperative mood. And the same, although in a different way, is taught by St. Thomas in the cited passage; there, he distinguishes between a formal curse and a material curse; for in the first place, he speaks of the formal curse, namely, with the intention of wanting the evil that is pronounced, when he says: "But to will, or to command another to do evil, is contrary to charity by which we love our neighbor."

[*Latin ed. p. 117*]

ON BLASPHEMY. 105 "For he who wishes good, wishes his own good. And thus, according to its kind, it is a mortal sin." Therefore, that which the Saintly Doctor understands to be contrary to charity, and to be mortal according to its kind, is not simply to pronounce a curse, but to will, or to incite to evil against another. Therefore, Saint Thomas recognizes the gravity of the sin only in willing the evil that is pronounced, or in inciting others to inflict evil. Then, to explain the material curse, he says that it is venial if it is uttered from a slight impulse, or from jest, giving the reason: "Because sins of words are considered most of all from the affection, as stated above, question 72, article 2, and in the cited article. Thus, he had previously said: 'Words, insofar as they are certain sounds, are not harmful to others, but insofar as they signify something; and this signification proceeds from within; and therefore, in sins of words, it is most important

to consider from what affection someone utters the words.'" Therefore, it is one thing to curse in a wish, as Cajetan says; it is another thing to curse by wishing, as Saint Thomas says; for "wishing" denotes cursing by wish words, beyond intention; but by "wishing," the Saintly Doctor understands cursing from true intention, as he clearly explains afterward, saying: "But to will, etc., is contrary to itself to charity, etc." And this is a formal curse, and therefore gravely culpable; and it becomes venial only, as the Angelic Doctor adds, either because of the smallness of the evil that is upon the person, or because of surprise, or from a slight impulse, by which the curse is uttered. Furthermore, this question is between me and my opponent about a mere name, for, given that Saint Thomas generally says that any curse is mortal in its kind, nevertheless, the Saintly Doctor certainly holds that cursing a person without a wicked intention is only venial. And I seek to prove nothing other than this. Therefore, both Saint Thomas, and Cajetan, and all other Doctors, along with Saint Augustine, with them in the same Angelic Doctor (1), do not consider it blasphemy to curse a person, because the person is a temple of the Holy Spirit; for if they held this, they could not say that a curse without a wicked intention is venial; for to curse the Saints or sacred things, even if there is no evil intention, is always mortal. From this, it is clearly inferred that, according to the Angelic Doctor, and the common opinion of the Doctors, it can rightly be considered that a faithful person is precisely because he is a temple of the Holy Spirit. Furthermore, it is inferred (contrary to what my opponent also suggests) that just as it is not a grave sin against charity and piety to curse the body of a living faithful person, if there is no wicked intention; so it is not a grave sin against charity and piety to curse the body of a faithful person who has died, when, according to Saint Thomas himself, the charity with which the dead, who died in grace, are to be treated, is nothing other than an extension of the charity that we must show to the living: "Charity (says the Saint) which is the bond uniting the members of the Church, extends not only to the living, but also to the dead who die in charity." But my opponent says that the greatest difference between cursing the living and the dead is that in the living, there is a ferment, and therefore he is in danger of sin, from which the one who has died in grace is immune; therefore, he says, the curse on the living can be venial: for when (2) 2. 5. q. 76. art. 4. object. 1.

[*Latin ed. p. 118*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. It can be the case that an offense against charity, when devoid of evil intent, is not a grave sin; but a curse upon the dead, since it is a sin against Religion, is always a grave sin, even when devoid of evil intent, because of the injury done to Religion when a sacred body is cursed. But to answer, let us again examine the principle, from which it is asserted that the bodies of deceased

faithful are sacred. He himself said, according to the teaching of St. Thomas, that cursing the dead is a grave sin, because their bodies were the organs of the Holy Spirit, and because they received the sacraments. Therefore, I answer: Regarding the assertion that the body of the deceased is to be considered sacred because of the sacraments received and because it was the temple of the Holy Spirit, I have already stated above that this reason applies to the bodies of both the living and the dead, because even the living are the temple of the Holy Spirit. "For you are the temple of the Holy Spirit." 1 Corinthians 6:19. But one might object that in the case of the living, there is a predisposition to sin that is absent in the dead. I answer: Therefore, was the body of Adam before the sin a sacred thing? Furthermore, the power to sin does not cause the essence of the body's sanctity to change. Likewise, neither concupiscence nor the danger of sin make the living person, here and now, not a temple of the Holy Spirit; all the more so because this concupiscence does not introduce any guilt or stain into the soul; for the grace of the Redeemer removes all stains of sin from the baptized, and abundantly repairs all its damages. "For with him there is fullness of joy." Psalm 129:7. "Where sin did abound, grace did superabound." Romans 5:20. "I came that they might have life, and that they might have it more abundantly." John 10:10. Therefore, the Council of Trent defined (Session 5, in the decree on original sin, canon 5) that through Baptism, souls are made immaculate, and that concupiscence does no harm, but rather, if not consented to, helps to receive a greater reward: "For in the regenerate, God hates nothing... they are made innocent, immaculate, pure, and beloved by God," etc. "But that concupiscence, or the spur, remains in the baptized, this Holy Synod declares and believes; and although it may be harmful to those who do not consent, yet those who have lawfully contended will be crowned." Therefore, the reason that the bodies are organs of the Holy Spirit does not make the body of the living or the dead sacred; otherwise, cursing the living, even without evil intent, would always be a grave sin; and the opposite is certainly true, as even the opponent admits. Therefore, it is necessary to resort to another reason (if the opponent can find one) to prove that the bodies of the dead are sacred. Nor does it suffice to say that one can disregard the fact that the living person is a temple of the Holy Spirit, but rather apply the mind to other particular motives, e.g., the injuries suffered from that person. And I conclude: And why cannot this distinction be made even with respect to the dead, cursing them because of some annoyance caused by them, but without evil intent? Furthermore, (as we wrote in the first letter), these curses are usually directed more against the living's disgrace than against the dead. But (he says), this cannot be, because the bodies of the dead are sacred; but here we return to the question, because this is what is being disputed; for we say that no body of the dead is to be considered sacred, unless the Church declares it to be so, and commands it to be treated as sacred, raising the veneration from the

human order to the supernatural and divine, as we will soon see with the authority of St. Thomas. But the author will object that, according to the same St. Thomas, article cited above, 2.

[*Latin ed. p. 119*]

OF BLASPHEMY. 107 The relics of the Saints are worthy of veneration, because the souls of these bodies enjoy the beatific vision of God; and because (it is said) the bodies of the deceased, although they cannot be venerated with the worship due to the living, cannot nevertheless be scorned, since they are sacred; for it is to be believed piously that their souls are saved. Therefore, I ask, should the bodies of the deceased, since they are sacred, be offered a sacred worship? But I would like to know what kind of sacred worship should be offered to them? The opponent admits that the worship due to the living is not due; but I find no other that is assigned by the Church or by the Doctors; nor can I conceive that any other kind of sacred worship can be assigned, except for burial, hyperdulia, and dulia. But (an objection arises) to what worship do the veneration of altars, vestments, and vessels belong? I answer that it belongs to the worship of latria; for heretics deserve no worship in themselves; and when they are venerated, they are not venerated with sacred worship, but relatively, or rather, reductively; therefore, their worship is reduced to the worship of latria, by reason of the sacrifice to which they are ordered. Therefore, I say that since the bodies of the deceased cannot be venerated with the worship of latria, or with any other sacred worship, they should not be numbered among the sacred things. P. Suarez (in his work *Defensio fidei catholicae contra Anglicanos*, book 8, chapter 5, paragraph 14, near the end) speaking of the veneration due to the relics of the Saints and other deceased, says: "Indeed, I add that this very custom (namely, of venerating the relics of the Saints as sacred) shows that the Church feels about the relics of the Saints in a much higher way than ordinary people usually consider the bodies of the dead. It occurs to me that even St. Gregory of Nyssa, speaking of the bodies of the Saints and of other deceased, says that there is no equality between the honor that should be given to them, and that which is given to others; for he adds that the bodies of other deceased are abhorred by all, and avoided by them: but the bodies of the Saints, because they are sacred, everyone desires to approach, and believes that they are sanctified by their touch." Let us quote his words concerning the body of St. Theodore (in the prayer for St. Theodore): "The body of St. Theodore is not to be compared to the bodies that are dissolved by common and ordinary death; ... for the relics of others are abhorrent to many, and no one willingly passes by a tomb, or, if unexpectedly opened, passes by it. But if one comes to a place similar to this, where our assembly is held, where the memory of the Just, and the sacred relics are, first of all, the magnificence of those things that are seen delights... then he desires to

approach the very repository, believing that sanctification and blessing are the result of his contemplation." From this, it is to be noted that there is a different veneration that the Church and the faithful give to the bodies of the Saints, and a different one that they give to the bodies of other deceased. As for the veneration due to the bodies of those whose souls enjoy God, we answer that the reasoning of St. Thomas cannot be valid, except for the Saints declared by the Church, of whom the Angelic Doctor speaks; for St. Thomas proceeds from the reason that the souls of the Saints enjoy God, to demonstrate that their bodies are to be venerated. Therefore, in order to understand what the holy Doctor thinks, and what the truth of the matter is, two kinds of knowledge must be distinguished, by which we know and believe that the soul of someone enjoys God; one is human, the other is supernatural and divine, from the declaration of the Church. Now it is certain that the veneration due to the bodies of the Saints, of whom St. Thomas speaks, cannot be applied except to those bodies whose souls are blessed.

[*Latin ed. p. 120*]

108 TRACT. V. ON THE SECOND PRECEPT OF THE DECALOGUE. We know, through revelation given to us by the Church, that the honor due to someone is elevated from a human to a superhuman order. Therefore, it is not sufficient for us to have moral certainty regarding the deceased, even with moral certainty, that their body should or could be venerated with sacred worship; rather, it is required that the Church authentically assure us of the certainty itself, communicated to us by that divine light, that the soul of that deceased person already reigns with God in heaven. Let us hear the words of St. Thomas, Quodl. 9, a. 16, ad 1. There, in response to the objection that the Saints cannot be venerated, because moral certainty of their blessedness cannot be had, the Saint (in the first response) says: "It must be said that the Pope, who is to 'canonize' the Saints, can be certified of the state of someone through an inquiry into their life and through attestation of miracles, and especially (note) through the inspiration of the Holy Spirit, who searches all things deeply of God." Therefore, for any moral certainty, but a human and natural one, we must not and cannot consider the bodies of the faithful deceased to be sacred, nor offer them sacred worship, unless after their canonization; for then the Church, from that supernatural knowledge which it has through the inspiration of the Holy Spirit, as the Angelic Doctor says, transfers the veneration towards that body, from the human order to the superhuman and divine order. This is also expressed in the decrees of Urban VIII, concerning the worship of the servants of God, not yet canonized or beatified (see Benedict XIV, de canoniz. SS., lib. 2, cap. 11), in which it was especially stipulated that, when writing the lives or deeds of such servants of God, the following protestation should be placed at the beginning by the author: "I profess

that I understand, or that anyone should understand, what I present in this book, in no other sense than that in which those things are usually understood which are supported only by human authority, and not by the divine authority of the Roman Catholic Church, or the Holy Apostolic See." Note these words, which are by human authority, not by the divine authority of the Church, etc. Therefore, the deeds of the servants of God have only human faith and veneration; but when the Church declares them saints, then the veneration is elevated from human to divine, because of the Church's divine authority. Hence, in order that some deceased person may be offered sacred worship, which is superhuman, it is necessary that some principle, and some superhuman knowledge of the sanctity of the object, be had, communicated to us through the Church by divine illumination. And therefore, when the Saints have already been declared by the Church, their bones, as well as their garments, letters, and other things which they used, become sacred; and it would be a grave irreverence and sacrilege to use them for profane purposes, unless absolutely necessary. On the contrary, concerning the things of the deceased who have not yet been canonized, even if we had some knowledge of their heavenly blessedness, it is not forbidden. Although we grant that we can have relics of a deceased person with the opinion of sanctity, invoke them, have their image painted, and do other things of that kind, because these do not have the nature of sacred worship, but are merely acts of religion (and not civil acts), which, as Father John of St. Thomas says, whose authority my opponent objects to, and as Bellarmine also teaches (contr. 4, l. 1, c. 10, n. 4 and 7) and Benedict XIV, de canon. SS., l. 2, c. 7, n. 4 and 7, can be had equally towards the deceased as towards the living. Indeed, Bellarmine infers from this that it is permissible to apply these actions to the deceased, because the living...

[*Latin ed. p. 121*]

ON BLASPHEMY. 109, can be lawfully performed: "If it is permissible," he concludes, "to honor the living whom we believe to be saints, why not the dead?" And since some had criticized this teaching of Bellarmine, namely that he permitted the veneration of uncanonized saints, he defended it by saying that he did not grant the worship of the uncanonized, except that which is usually shown to the living; see Benedict, loc. cit., chap. 9, no. 1. I have said that acts of religion are one thing, and sacred worship are another: to kiss the hand of a servant of God, to commend oneself to his prayers, to wash his feet, and the like, these are indeed acts of religion, because they spring from religion; but they are not acts of sacred worship, because they are not performed towards sacred things. And likewise, to bury the dead in a sacred place, to incense, to kiss their feet, to venerate their relics, these are indeed sacred ceremonies and acts of religion, but not acts of sacred worship. Indeed, sacred ceremonies are called, and truly are, sacred, because they refer to themselves, as they are sacred according

to the precepts of the Church; but they cannot be called sacred worship, because sacred worship refers to the object towards which it is directed; therefore, it can never be said that there is sacred worship when it is not certain that the object is sacred. Furthermore, they are undoubtedly acts of religion; and here I confess that in my first response, an error occurred (I do not know how); for when I should have said that the incensings, and benedictions, and other ceremonies which we usually perform for the dead, are not sacred worship, I said that they are not acts of religion. I affirm, and I do not doubt, that they are acts of religion; but they are not, therefore, acts of sacred worship, and consequently, it is not because of these acts which are performed towards the dead that their bodies should be considered sacred, and therefore, they cannot be venerated with sacred worship. Therefore, Alexander III, chap. 1, de relig. et SS. venerat., absolutely forbade venerating anyone as a saint unless the authority of the Church is added: "Even if miracles were to be performed through him, it would not be lawful for you to venerate him as a saint without the authority of the Roman Church." And although, formerly, some venerated as saints without the declaration of the Church, but by the custom of the people, nevertheless, Bellarmine, in the place cited (chap. 8, at the end), responds that this was permissible by the tacit approval of the Pope: "Just as other customs have the force of law by the tacit consent of the prince; so too, the worship of a certain saint, introduced by custom, has the force of approval, tacit or express, of the Pope." Therefore, I reiterate: I do not doubt that the rites which the Church performs for the dead are sacred ceremonies and acts of religion, but not acts of sacred worship; as indeed, the Roman Ritual, speaking of funerals, calls the rites performed in the burial of the dead not sacred worship, but only mysteries of religion, and signs of Christian piety, saying: "The sacred ceremonies and rites by which the Mother Church is accustomed to use in the funerals of her children, as true mysteries of religion, and signs of Christian piety, and the most salutary prayers for the dead, the parish priest should observe with the utmost care." I add two other observations, from which this becomes clearer. First, if such worship were sacred, it would also be public worship, if it were performed by a public minister of the Church; and this is impossible, since the Church itself prohibits anyone from performing public worship to anyone who has not been declared a saint or blessed. Furthermore, St. Francis de Sales says that sacred worship is not offered to the dead except in protestation of their excellent virtue; and knowledge

[*Latin ed. p. 122*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. It must be certain that the rites performed for the deceased do not constitute sacred worship. How can it be said that the rites performed for the deceased are sacred worship, when, speaking generally, no knowledge is

had of the excellence or virtue of the deceased? Indeed, it is well known that among the faithful who have died, many are cremated with eternal fire, and meanwhile, these rites are performed indiscriminately for all. Therefore, it must be said that the Church does not consider such rites as sacred worship. I anticipate a certain objection that might be raised: if, therefore, it is admitted that venerating the dead is an act of religion, then, undoubtedly, cursing them will be an act opposed to religion. The answer is given first by analogy: if this argument were valid for the dead, it would also be valid for the living; for, as we have shown, venerating living servants of God through the acts described above is also an act of religion or religious worship; therefore, cursing such a servant of God, even with a wicked intention, would likewise be a grave sacrilege; but no one says this. But a direct answer is given. It must be distinguished and considered from what motive such an act of religion proceeds; if it proceeds from the motive of the object itself, because the object is sacred, then an insult to it is a sin contrary to religion, and is sacrilege; but if the act of honor proceeds from the religious piety of the faithful, then it is certainly an act of religion, because it proceeds from the motive of religion; but a curse upon the object will not be an act contrary to religion, because it is not an act that refers to the sacred object. The adversary marvels, and calls those who, with a sincere face, say in the confessional or elsewhere that it is not from themselves a grave thing to curse the dead, imprudent (not to say rash). But I, and others with me, marvel at those who do not feel scruples in absolutely proclaiming that this curse is a mortal sin and blasphemy. To say that some action is not a grave sin, it suffices that there is a true probability that it is not so, as all acknowledge; I mean a probability that is based on a firm foundation, such that it can be safely held and taught (according to the common opinion, setting aside the question of what is more or less probable). And the two doctrines that my adversary opposes to me are of little or no importance to our matter: one from St. Augustine: "He would sin gravely in matters pertaining to the salvation of the soul, or solely because he would prefer the certain to the uncertain." Book 1, on Baptism, chapter 3. And in chapter 5: "If it is uncertain whether it is a sin, who doubts that it is a certain sin?" For there, the Saint speaks of one who acts in doubt concerning matters pertaining to the necessity of eternal salvation, in which case everyone is bound to follow what is certain. Moreover, there the Saint speaks of a Donatist, who, although certain that baptism was rightly and properly conferred in the Catholic Church, was doubtful whether it was rightly received in his own sect; I will present the entire text (in chapter 3): "If he had a doubt whether it was rightly received there, where he was certain that it was rightly received in the Catholic Church, he would sin gravely in matters pertaining to the salvation of the soul, or solely because he would prefer the certain to the uncertain." And then in chapter 5: "Therefore, if it is uncertain whether it is a sin to receive in the part of the Donatists, who doubts that it

is certainly not a sin to receive there, where it is certain that it is not a sin?" Who doubts that this Donatist certainly sinned? But St. Augustine was not saying that those who act with a true and solid probability, when they are not in doubt about matters pertaining to the necessity of salvation,

[*Latin ed. p. 123*]

OF BLASPHEMY. 111. As is the case with baptism, and when the action is not certainly illicit: a doubtful law does not impose a certain obligation, according to what is taught by the Angelic Doctor in *Quodlibet* 14, on truth, article 3: "No one is bound by any precept unless through the knowledge of that precept." And this is also proven from chapter *Cum iure* 31 of *De officio et potentia judicis delegato*: "Unless you are certain of a mandate, you are not obliged to fulfill what is commanded." The same is found in canon *Sicut quedam*, distinct 13, where St. Leo writes: "In those things which are either doubtful or obscure, we must know that what is to be followed is that which is not contrary to the precepts of the Gospel, nor opposed by the decrees of the Holy Fathers." This passage is relevant insofar as it can be asserted that some action is not gravely illicit. But to affirm absolutely that some action is a mortal sin, it is not sufficient to have a probable opinion, nor even a more probable one: for a more probable opinion does not exclude a reasonable fear of error; hence, it does not make the law cease to be doubtful, and it does not mean that the opposite opinion cannot be true, if it is truly probable. Therefore, when it comes to sacraments, it is not permissible to follow the more probable opinion when it is opposed by a probable one, even if the latter is less probable. Therefore, in order for some action to be gravely illicit, certainty is required, as taught by all, including St. Raymond, who wrote in book 3 of *De poenitentia*, § 21: "Do not be too quick to judge mortal sins, unless it is clear from certain Scripture." Thus, the Saint warns against judging any action to be a mortal sin, unless it is certain that it is so: and when he says "unless it is certain," he always means that it is wrong to assert that something is a grave sin, whenever it is not certain that it is so. St. Antoninus also said (p. 2, title 1, chapter 11, § 28) that it is not possible to determine with safety that any action is a grave sin, unless there is an explicit passage of Scripture, or a determination of the Church, or an evident reason: "The question in which we are concerned (these are the words of the Saint) is whether some action is a mortal sin or not, unless there is an explicit authority from Scripture or from a canon of the Church, or an evident reason. This is determined most dangerously. Because (as he adds) he who determines without any of the aforementioned reasons builds to hell, and casts souls into the danger of damnation." Hence, most wisely, Benedict XIV, in his work *De synodo*, in many chapters, warns bishops not to condemn any opinions as grave sins, which are defended by Doctors of both sides as probable. My opponent, however, has gone so far as to call his own conclusion a theological opinion.

I do not want to force myself to decide whether his opinion has weight, and how much weight it has in terms of probability, but I do not know whether a theological conclusion can be said to exist, when there is no text of Scripture for it, nor a definition of the Church, nor an evident reason, nor the common authority of Doctors, nor even that of one who has written according to his opinion. He cites the text of St. Isidore of Pelusia (book 5, epistle 491): "The living reproach even the dead; and the barren reproach the fertile! Why, therefore, should the laws of nature, and the limits of enmity, reproach the deceased? For you see the tongue sharpened in ashes and dust; but for the violation of that sanctity, to which all mortals should strive, the reproach is due." But in the book that I have, printed in Rome in 1629, I find that the aforementioned text is not written in that way, but in other words (p. 370); thus it is written there: "The living often reproach with calumnies..."

[*Latin ed. p. 124*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. "You cease not, even when your enemies are dead, to conciliate them, and to enter into a covenant." Why, then, do you transgress the limits of nature and of animosity, while the life of the calumniator is already extinguished? For you think that you alone are speaking against ashes and dust; but beware! First, you violate the most sacred right of burial, which everyone desires and seeks to possess. Then, that person has an immortal soul, whose eye is ever watchful and always avenging. Let others judge whether this authority has any weight in the opinion of my adversary, who maintains that the bodies of the faithful dead should be treated as sacred and venerable. St. Isidore calls the right of burial a "sacred" thing, not the body of the deceased. But, furthermore, my adversary claims that all things favor him: Scripture, the definitions of the Church, the common authority of the Doctors, and evident reasons. Scripture says: "Nor the effeminate nor liers with mankind nor thieves nor covetous nor drunkards nor railers nor extortioners shall possess the kingdom of God." (1 Corinthians 6:10). Calmet explains that "railers" are those who reproach or slander others, either to their face or behind their backs. The definition of the Church is the discipline by which it governs in the burial of the faithful. He also claims the support of the common authority of the Doctors, saying that moralists have not discussed this matter because, according to their rules, it is considered certain. Finally, he has evident reasons, which are, of course, those that he himself expounded in his dissertation. I do not wish to decide the matter with my own judgment, but I urge wise men to exhaust all arguments. Furthermore, speaking of my opinion, as I stated in the preceding pages, in addition to the three authors cited there who have written on this subject, I have taken care to have this matter examined by many, and especially by all the congregations of missionaries in the city

of Naples, because in those congregations, all profess moral theology, and there are gathered the most select clergy of Naples. My adversary, in the midst of all this, brings forward a passage from Socrates, implying that not all are endowed with the skill to be suitable teachers for resolving such questions. I concede that not all are teachers; but since these congregations, on behalf of the entire body, have given me an answer, it must be assumed that the resolutions were given not by the less wise, but by the wiser. As I have already written, this question was also discussed in Rome, at the mandate of Benedict XIV, and according to the mind of that Pontiff (which, moreover, I never intended to be a definition from the Chair), the question was resolved, that it did not involve the guilt of mortal sin. But he writes that he is not bound to give credence to this, nor to the examination made, nor to the resolution given in Rome. I never intended to force him to believe it; but I wrote this, because there are strong reasons why I should not bring it into doubt; because a priest, religious, learned, and not at all affected by this controversy, testified to me as a witness from his own knowledge and from what he had seen (for he himself had seen the Pope's document), that the question was resolved in that way. Therefore, I believed that others who are indifferent to both sides of this opinion could prudently and not without reason believe this. As for me, I was so certain of it that I did not hesitate to write the same thing in the same moral work that I composed, which I dedicated to the same Pope, and which I took care to present to him, and to explain the matter as he had testified to me. What remains is, if my adversary, with a good intention, de-

[*Latin ed. p. 125*]

ON BLASPHEMY. 113. He wrote this, and I am equally certain that he was not led to write it by any attachment of mind, or by a desire to contend (indeed, it would be best, after having freed myself from the chains of the world, in order to safely place my soul in eternal salvation, to strive to address that which would lead to my condemnation; and why? so that I might acquire empty glory, or rather, perpetual disgrace in defending a false opinion!). But he did so with a righteous and good intention; namely, to free so many from their sins who had contracted the habit of cursing the dead, and who, despite believing (erroneously, in my judgment), that it was a grave sin, nevertheless persisted in uttering those curses. As for my adversary wishing to call me obstinate and driven by false zeal, I disregard this, knowing that the Lord is the one who judges me. 1 Corinthians 4:4. To this, I add a responsive letter written to me by the Most Reverend Abbot, Father Bartholomew of Mark, a Basilian (to whom I sent this letter of mine for consideration), a man of the greatest learning, both within his own religious order, which he has adorned with excellent works, and also in Naples and Rome, etc., a master in sacred theology, whom he himself taught for many years with the approval of all, and who has practiced for

30 or 40 years in hearing confessions. I pondered whether I should include the following letter from him; but I was guided to do so for two reasons: 1. so that it may be known to all that I, as is my custom, always seek the counsel of other Doctors, and am not deceived by my own opinions, as my adversary now claims; 2. so that I may show what estimation other outstanding men have of my opinion, and of the opposing opinion. The letter is as follows:

Most Reverend Father,

Sir, Father, Colonel.

For a long time, I have had the consolation of reading your learned dissertation on cursing the dead, in which you maintain that it is not a grave sin to curse them, which is my own sentiment, and that of the wiser people with whom I have often discussed this matter. Now, through your kindness, you send me the response you made to one of your opponents, in which I admired your doctrine, and by adding reasons to reasons, you have made it almost demonstrative, and I do not know on what basis your opponent can defend the idea that it is a grave sin, as the reasons he adduces seem to me to be of no importance, as I read in a booklet sent by him to the printers, and which Your Reverence has thoroughly refuted, and presently refutes.

Certainly, I do not understand how it can be a mortal sin to curse the dead. I also praise your moderation in calling this opinion probable, saying that it is not a grave sin to curse the dead; you should rather call it morally certain, and consequently, the opposite, which you defend against your opponent, morally false, and of weak and tenuous probability. Therefore, I have had nothing to take away, nothing to add, and nothing to change in your learned writing; and I pray that the Lord may enlighten the mind of your opponent, and of a few companions who make a show of finding fault in every small action.

Your Reverence, in the meantime, should not hesitate to publish the aforementioned apologetic response; for in it...

[*Latin ed. p. 126*]

114 TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. It was received with applause, as was the case with all his other works. I commend myself to your prayers, and with all due respect, I kiss your hands. From Your Most Reverend Mother, June 14, 1758. Your most humble servant, bound by obligation and devoted, Bartholomew of Mark, Abbot. I add these few words. The aforementioned Abbot, as he writes, seems to believe that I express my opinion solely as something to be considered probable. This is not what I said; I merely stated that, in order to affirm that an action is free from grave sin, it is sufficient that it be probable that it is not grave. Furthermore, I did not wish to give a judgment as to whether my opinion is or is not morally certain, since I leave that to the judgment of the

wise; but in general, I considered it, and I still consider it, to be more than probable. Recently, another letter from the opponent appeared, to which we do not believe it is necessary to respond, as we have already provided sufficient answers. However, if the opponent believes that those who write last are the victors in controversies, we gladly concede such a victory to him. CHAPTER II. ON OATHS. 12. What is an oath, and what are the formulas for taking an oath? 13. How many kinds of oaths are there? 14. The conditions of a lawful oath. 15 and 16. Is it permissible to swear with equivocation? 17. He who swears without the intention of swearing. 18. An oath does not obligate to do unlawful things. 19. In how many ways is the obligation of an oath removed? 20. Concerning adjurations and exorcisms. 12. AN OATH is defined as: An invocation of the divine name as a witness to the truth. Therefore, one swears when one says: By God; by the Saints; by sacred things; by creatures in which the goodness or power of God shines in a special way, namely, by the Church, the cross, the sacrament, the Gospel, the soul, heaven, earth, etc. But one does not swear when one swears by one's conscience, by one's own faith (not understanding divine faith), or when one says: May God live, God sees this: It is true as the Gospel. But these words, "May God live, God sees this," must be understood as declarative, as Cajetan, Ledesma, etc., say in Salamanca, treatise 17, chapter 2, number 25. Otherwise, if they are said invocatively, they are true oaths; and Salm., Azor., Fac. Soto, and Trull are noted there, that such utterances are generally understood as invocative and therefore are considered true oaths. If someone were to say: "I swear that this is so," it is not considered a true oath, unless the one who demands the oath presses for it, and asks that it be sworn by God, by the Gospel, by the Saints, by a sacred thing, or by the soul; and then the other swears that it is so. 13. There are four kinds of oaths: Assertory, when something is asserted; promissory, when something is promised under oath; exsecratory, or imprecatory, when, for example, it is said: "May God strike me if I do not do this"; and comminatory, when, for example, it is said: "Unless you obey me, by God I will see to it that you are punished; you will give me penalties, etc." From this, it should be noted that he who asserts a falsehood in an assertory oath sins gravely. He also sins gravely who, in a promissory oath, swears without the intention of fulfilling it.

[*Latin ed. p. 127*]

ON OATHS. 115. I say without intending it; for if one intends to keep his promises, but afterwards does not keep them, and the matter is of little importance, then it is very likely, according to Soto, Suarez, Azor, Sanch, and Salm, that one does not commit a mortal sin (1); because in an oath, God is invoked as a witness to the present will, and not to the future execution of the promise. But here a doubt arises: it is certain that if the promise is of a serious matter, then the failure to fulfill it is also a serious

fault because of the oath taken; but why is not a serious fault committed by the same oath if the promise of a trivial matter is not fulfilled, since in perjury, the triviality of the matter is not admitted? But Salm (2), along with Soto, Suarez, Castropal, etc., rightly answers that when one does not fulfill a promise confirmed by an oath, one does not commit perjury, but rather sins by the infidelity that one shows towards God, by disregarding the divine authority in a serious matter, which is added to strengthen the promise; but when the promise is of a trivial matter, the failure to fulfill it is not considered a serious defect of fidelity, nor a contempt of the divine authority. This is confirmed by the teaching of St. Thomas, who says: "He who promises something, if he intends to do it, does not lie; but if he does not do it, then he seems to act unfaithfully" (3). Nevertheless, if someone were to promise by oath without intending to swear or to obligate himself, he would sin grievously. Nevertheless, it is probable that he would not be bound by the promises, at least not by a serious obligation (4). An expletive oath, in which God is not invoked, is probably not binding under a serious obligation. The same can be said of a threatening oath; indeed, if the penalty threatened is unjust, the oath will not bind in any way (5). Therefore, oaths made by parents to punish their children are often not binding; because they are either for trivial matters, or out of the heat of anger (6). 14. For an oath to be licit, three conditions are required: judgment, justice, and truth. Judgment means that one should not swear out of vanity, but for a reasonable cause. The lack of judgment does not exceed a venial fault (6). Justice, so that the thing sworn is just: therefore, he who swears to do an unjust thing sins grievously, even if it is only slightly unjust. Truth, so that the thing asserted by the oath is morally certain, at least in some way (7). 15. Here it is asked whether it is permissible to swear with an equivocation? It is one thing to lie, and another to equivocate. Equivocation can occur in several ways, either when the word or the sentence has one literal meaning and another spiritual or mystical meaning. Equivocation is also called a restriction that is not purely mental, because a purely mental restriction is entirely prohibited, as is stated in proposition 26, condemned by Innocent XI, in which it was generally stated that it is permissible to deny that one has done something that one has actually done, provided that the one denying understands something else within himself that one has not actually done. A purely mental restriction is one in which no one can in any way perceive the equivocation. A non-purely mental restriction is one in which, from the circumstances, one can argue that one is speaking, understanding something different from what the sentence itself means: for example, if one knows something under seal, one can say: I do not know; namely, I do not know in the way in which I can reveal it: as Jesus Christ said, "But of that day and hour, no one knows, neither the Son, but the Father" (Matthew 24:36); understanding that he did not know as a man: or, as Gotti and Tourn (8) better say, that (1) Book 3, n. 172. (2) Salm, tr.

17, e. 3, n. 55 and 54. (3) St. Th., 2.2, q. 110, art. 3, ad 5. (4) Book 3, n. 172, v. An autem. (5) N. 134, ad 6, and 143. (6) N. 186, v. Parentes, and 187. (7) N. 144, ad 160. (8) Tourn., de Iucarn., quæst. 11, art. 2, v. Quo autem.

[*Latin ed. p. 128*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. He did not know how to reveal it. Thus also, St. Thomas states (1), saying: "It is said to be unknown because it does not make it known." This is as if he had said, "I do not know how to reveal it to others." The same sentiment is held by St. John Chrysostom, St. Augustine, St. Jerome, St. Ambrose, St. Athanasius, St. Basil, St. Hilary, and others, as Suarez testifies (2). Likewise, Christ's words: "I ascend not up to the feast day," John 7:8, should be understood in the sense that, although He had already secretly gone to the temple, He was clearly indicating that He would not be present at the feast. Therefore, when a just cause is present, we can licitly and properly respond: "Indeed, I swear, with equivocation, or with a restriction that is not purely mental," as commonly stated by Soto, Gonet, Palud, Wigandt, Laym, Garden, Holzman, Salmant, Tournely, Croix, Viva, and others (3). Furthermore, Adrian, Cajetan, Riccard, Armil, Tabien, Sylvester, Soto, and Navarr (4) agree; because the intention is not to deceive the neighbor (which is always illicit), but to allow oneself to be deceived, especially when one is not always obligated to answer the question asked. Nevertheless, this is not permitted in a court of law, because anyone questioned by a judge is obligated to tell the truth; therefore, he who swears with equivocation sins against legal justice (5). 16.—However, many Doctors state that outside of a court of law, if someone has already confessed a sin to one confessor, he can say to another who questions him that he has not committed that sin, understanding that he has not committed it in such a way as to be obligated to confess it again. It should be noted, however, that everyone is obligated to reveal a habit of sin when questioned by a confessor, as stated in Proposition 58, condemned by Innocent XI. Thus, if a poor man has one loaf of bread, and is asked to lend the bread, he can say that he does not have it (6), because, given the circumstance of poverty, others can rightly argue that he is speaking in another sense, namely, that he does not have enough to give to another. In these and similar cases, it is proper to respond: "I wish I did!" or: "And who has this?" And: "Where is the bread to be found?" (7). 17.—If someone swears without the intention of swearing, and without the intention of fulfilling promises, he undoubtedly sins gravely. If, on the contrary, he swears with the intention of fulfilling promises, but without the intention of swearing, it is probable that he only sins venially, because there is no other guilt present than that of vainly invoking the name of God. The same is true if he swears without the intention of obligating himself, because such a promise is not a true promissory oath, nor a true promise, but rather a declaration of his present willingness to give. However, if he

swears without the intention of fulfilling, but with a true intention of swearing, he sins gravely, and is bound by the promise, even if he did not have the intention of obligating himself, because the obligation arises from the very oath, which, out of reverence for the divine name, obliges one to fulfill what is sworn, provided that he knows the obligation of the oath, as St. Thomas states (8). 18.—An oath can never obligate one to do something illicit; and therefore, neither to do something useless, nor something that impedes a greater good, such as if it were contrary to evangelical counsels. It should be noted, however, that when an oath is made in favor of a third party, it must always be fulfilled without sin. Therefore, he who swears to pay usury, or to give his goods to a thief, is obligated to fulfill it, even if he can later seek compensation (9). It is also probable, according to Sanchez and La Croix, that one can then swear (1) St. Thomas, 3a, q. 10, a. 2, ad r. — (2) Suarez, tom. r., in 5, q. 10, a. 2. — (3) Lib. 3, ex n. 15r. — (4) Adrian, 4 Sent., qu. de sig. conf.; Cajetan, Opusc. 16, resp. q. 5; Riccard, in 4, Dist. 18; Armil, v. Juramentum, n. 16; Tabien, v. Jurare, 2, 13, n. 14; Sylvester, v. Mendacium, q. 6, 2, 4, et v. Juramentum, 3, qu. a. 2; Licet, Soto de just., l. 5, q. 6, a. 2; Navarr, Man., c. 12, ex n. 8, et c. 18, n. 6r, et c. 25, a. 94. — (5) Lib. 3, n. 155. — (6) N. 163. — (7) N. 155, et seq. (8) N. 172, v. Quæritur. — (9) N. 177.

[*Latin ed. p. 129*]

OF OATHS. 117. One who undertakes to do something, under a condition, is not bound to perform it, unless he obtains from a prelate a relaxation of the oath; and if he obtains it, he is no longer bound (1). But if the promise has been rendered null by law for the common good, such as a promise made by a concubine to a cleric, or a renunciation of the ecclesiastical forum, or an oath extorted by fear for a religious profession, or for marriage, or betrothal, then the oath is clearly null (2). Furthermore, every oath is understood to be made under the following conditions: 1. that the person to whom the promise is made accepts it, or does not retract it; 2. unless the circumstances have changed significantly, or unless there is some circumstance that, if foreseen, the oath would not have been given; 3. if the final cause for which the promise was made ceases; 4. if the other party observes what they have promised; 5. unless superiors prevent the promise from being carried out (3); 6. if the promise can be fulfilled without serious harm (4). Therefore, if you promise to keep a secret, you are not bound to reveal it if doing so would cause you serious harm. However, if you promise to keep a secret even at the risk of your life, it is likely that you would not be bound (5). Likewise, even if you promise not to reveal a secret when treating the sick, you are not bound to keep it secret if, otherwise, someone would be in grave danger of death (6). 19. How is the obligation of an oath removed? 1. By nullification, which can be done by anyone who has dominion over the person who made the oath, such as a father, a prelate, an abbess, a tutor, etc.

And this can happen even if it is to the detriment of a third party, in those contracts which can be nullified by these superiors (7). 2. By dispensation or commutation, which can be granted by those in whom resides the power to dispense with or change vows (8); 3. By relaxation, which can be granted by ecclesiastical prelates to their subordinates, and also by delegates, who can dispense with vows (9). It should be noted that 1. an oath given for the benefit of a third party can be relaxed by that same third party, as taught by St. Thomas (10), with a qualification. And this (as many Doctors say), even if the oath is given in honor of God, if the entire promise is for the benefit of a third party, e.g., a monastery, a church, or a poor person (11). It should be noted 2. that no cause is required for nullification, but a cause is required for dispensation, commutation, and relaxation (12). It should be noted 3. that when a promise is confirmed by an oath, and is accepted by a third party, it cannot be relaxed by anyone other than that same third party, unless there is a contract between them. Therefore, an oath, or vow of perseverance, which is given in certain congregations, such as the venerable Congregation of the Fathers of the Mission of St. Vincent of Paul, or in our own Most Holy Redeemer, cannot be relaxed by others, unless by the Pope, or a superior of the congregation; for such an oath (or vow) takes on the nature of a contract, which exists between the subject and the congregation, since the congregation obligates itself to support and instruct him, and the subject obligates himself to serve the congregation; and thus declared His Holiness Pope Benedict XIV in the bull Convocatis, § 32, dated November 25, 1748, and confirmed in another bull, Inter præteritos, § 5, n. 66, dated December 3, 1749 (13). Finally, it should be noted that a promise made under oath, even if accepted by a third party, can be relaxed by a superior, if it was made to the detriment of one's own rights, or to the detriment of the common good, or if the oath was extorted by fear (14). (1) Lib. 3. n. 172. in fin. — (2) N. 177. v. Aliter. — (3) N. 180. 187. et 188. — (4) N. 185. — (5) N. 97. v. Hoc quoad. — (6) N. 185. v. Juramenta. — (7) N. 189. — (8) N. 190. — (9) N. 192. — (10) 2. 3. q. 89. g. ad 2. — (11) N. 195. — (12) N. 192. — (13) N. 255. v. Notandum — (14) N. 192.

[*Latin ed. p. 130*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. 20.—Here, the theologians also speak of adjuration, which occurs when someone is sworn or entreated in the name of God to answer; or when, in His name, a command is given, as happens in exorcisms with the possessed or those vexed by demons. Such exorcisms can be performed privately by anyone, but solemnly only by the ministers of the Church, with the permission of the Ordinary. And whoever undertakes this office should take care not to seek out vain and curious matters, but should use these exorcisms only to avoid harm and to free the possessed from the vexation of demons

(1). CHAPTER III. ON VOWS. 21, 22, and 23. Concerning the intention of obligating oneself. — 24. Concerning possible and better matters. — 25. Concerning a vow made for an evil purpose. — 26. Concerning not obtaining a dispensation for a vow. — 27. Concerning marriage. — 28. Concerning not making vows. — 29. Some things worthy of note. — 30. Concerning a conditional vow. — 31. Concerning a disjunctive vow, and concerning one who fulfills a vow without remembering it. — 32. If time elapses. — 33. Concerning guilt in delaying. — 34. Concerning a vow of religious life. — 35. Concerning a change of matter. — 36 and 37. Concerning irritation. — 38. Concerning commutation. — 39 and 40. Concerning dispensation and its causes. — 41. If a vow has been made for the benefit of a third party. — 42 to 44. Who can grant a dispensation. — 45 to 49. Concerning reserved vows. — 50. Whether the Pope can grant a dispensation for solemn vows. 21.—A vow is defined as: "A promise made to God, deliberately concerning a possible and better good." The definition is explained. It is said that 1. it is a promise: it is understood to be a promise made with the intention of obligating oneself, and indeed with a grave obligation, in contrast to a mere intention, which, strictly speaking, does not obligate at all. Therefore, a vow made without the intention of promising and obligating oneself is entirely null. On the other hand, one is bound by a vow if one intends to promise and obligate oneself, even if one does not intend to fulfill it, or if one intends to promise and fulfill, being aware of the obligation of the vow, even if one does not consciously reflect on it: for he who intends the antecedent, intends also the consequent (2). However, if someone were to intend to promise and not to obligate oneself, we would say that this person sins, but according to the more probable opinion, one would not be bound by the vow, even if one were aware of the obligation of the vow, because the debt arises from one's own will, and no one is bound unless one has the will to be bound. And such a sin (we add), strictly speaking, would not be more than venial; unless it occurs in the profession of religious life or the reception of holy orders: for then it would certainly be mortal; Less. Sanch. Suar. Salm. etc. (3). Indeed, if someone were to be ordained without the intention of obligating oneself to chastity, that person would still be bound by that obligation, at least by the command of the Church (4). In case of doubt about the intention of obligating oneself, it is ordinarily presumed that such intention was present in any vow that is made. And the same applies if there is doubt as to whether one is aware of the obligation of the vow, according to the general rule that every act is presumed to have been performed properly. In case of doubt as to whether a promise is a vow or merely an intention, we say that, in such a case, it is presumed to have been a vow, when the person remembers having believed that they would sin if they did not fulfill what they promised (5). 22.—It is said that 2. it is deliberate, because, for the obligation of a vow, perfect use of reason is first required. Therefore, a vow made by a child, if it was made before the age

of seven, does not obligate, unless it is proven that the child used reason; but if it was made after the age of seven, in case of doubt, it does obligate, because it is then well presumed (1).

(1) Lib. 3. post. n. 193. Appendix de Adjurat.

(3) N. 201.

(5) N. 201. Quær. II.

(4) Lib. 6. n. 809. Dubit. 2.

(5) Lib. 5. n. 201. Quær. III.

[*Latin ed. p. 131*]

OF VOWS. 119. The perfect use of reason is presumed to be present, according to what commonly happens. The same should be said regarding the doubt as to whether a vow was made before or after seven years, according to the rule soon to be given, that every act is presumed to have been duly performed (1). 23. Furthermore, full and free deliberation is required, whereby one wishes to obligate oneself with a vow; therefore, a vow made out of fear unjustly instilled to extort a vow is null; and not only if the vow is solemn (which is certain), but also if it is simple, according to the more probable opinion (2). Thus, also, a vow is null if it was made out of error (even a venial one), when the error was concerning the substance or concerning some substantial circumstance. Indeed, Suar. and Sanch. with St. Thomas (3) probably say that any error concerning accidental circumstances releases one from the vow, provided that the vow would not have been made if the error had been known from the beginning: "To release" (these are the words of the Angelic Doctor) "from the obligation of a vow or oath, that which, if it had been known from the beginning, would have prevented it from being made" (4). 24. It is said (3) of a possible and a better good. It is said of a possible good, because otherwise the vow is not binding. However, if it were only partially possible, and the matter was divisible, it would be valid only to the extent of the possible part. And thus, one should fulfill the principal vow, if the accessory cannot be satisfied; but on the contrary, if the principal is not possible, there is no obligation to fulfill the accessory (5). It is also said of a better good, because a vow concerning an inferior or indifferent good is also null, unless it happens that, according to the circumstances, it would be better (6). 25. It is asked here (1). Whether a vow made for a bad end is invalid? Let it be distinguished: if the end is evil on the part of the one making the vow, e.g., if someone vowed to fast in order to obtain human praise from the very act of the vow, then it is valid. However, it will not be valid if the end is evil on the part of the thing vowed, as if someone promised to fast in order to be praised for fasting, or in order to avoid expenses. If, however, someone vowed to obtain something temporal from God, or if the end is placed under a condition (e.g., if he would kill an enemy), the vow is

certainly valid (7). It should also be noted that if someone vowed to sin, even venially, he would sin gravely; because he would want what is due to God to be turned into an insult to Him (8). The same is said of swearing to commit a sin; thus, Marchant, Turrian, and Elbel (9), although often ignorance excuses the uneducated. 26. It is asked (2). Whether a vow not to seek a dispensation is valid? It is answered affirmatively, provided that it is not observed that the dispensation would be more beneficial to the spiritual progress of the one making the vow (10). 27. Whether a vow to take a wife is valid? Ordinarily, it is not valid, unless the vow was to take a poor woman or a prostitute, unless marriage is entered into to remove scandal, or to honor an honor that has been lost; or if a man wanted to take a wife, or did not want other remedies to achieve continence, after having experienced his own incontinence (11). 28. It is asked (4). Whether a vow not to make any more vows is valid? It is valid if someone is too prone to making vows with the danger of not observing them later. Therefore, if he later makes some vow, he sins, but the vow made later remains firm, provided that he does not have the intention that all future vows be invalid, and he does not revoke this intention, as in (1) Lib. 3. n. 196. — (2) N. 197. — (3) In 4. sent. dist. 58. q. 1. a. 3. ad 1. — (4) Fib. 3. p. 193. et 226. — (5) N. 202. — (6) N. 204. — (7) N. 205. — (8) N. 206. — (9) N. 146. v. 5. Venialiter. — (10) N. 208. — (11) N. 209.

[*Latin ed. p. 132*]

TRACTATE V. CONCERNING THE SECOND PRECEPT OF THE DECALOGUE.

120. If a vow is to be considered fulfilled, it should be judged according to the first vow made (1). If someone makes several vows that are incompatible, they are bound to fulfill the more important one, and if they are equal, to the earlier one, according to common opinion (2).

29. Several things must be considered regarding the obligation of a vow: Firstly, if the matter is serious, the vow obligates under a serious obligation; but if someone wishes to obligate themselves to it under a lesser obligation, it is more likely that they will remain obligated under the lesser obligation (3). Secondly, if the matter is trivial, no one can obligate themselves to it with a serious obligation, even if they wish to. However, if someone vows to perform a small work on any day of the year, then, if the vow is made as a single, comprehensive one, intended to create a strong obligation (as is generally the case with real vows), then, by omitting the work for a time or in a notable way, they would sin grievously. Conversely, if the vow is made in honor of a particular day to fulfill an obligation (as is the case with personal vows, e.g., reciting the Angelic Salutation daily), then omissions are only venial (4).

Secondly, heirs are obligated by justice to fulfill all the real vows of their testator; and these must be fulfilled before legacies, but after debts of justice (5).

Thirdly, it is permissible for a father of a family to make real vows, even if it harms the legitimate inheritance of his children to some extent (moderately, however). However, he cannot do this at the time of his death, because then he must dispose of his goods according to the provisions of the law (6).

Fourthly, a father cannot obligate his children to vows made in their name. Nor can a community obligate future members (7).

Fifthly, personal vows must be fulfilled by the person who made them; but real vows can also be fulfilled by others (8).

30. Sixthly, concerning the conditions of vows, it must be noted that if the condition is alone either scandalous or impossible, the vow is not binding (9). If someone were to vow, for example, to fast unless their father consents, they do not sin if they pray that he does not consent. However, they would sin if they fraudulently obtained his dissent: but in that case, it is more likely that they would be released from the vow, since the condition would no longer be fulfilled (10).

Seventhly, if someone vows chastity under the condition, for example, that God frees them from a grave sin during the year, and they subsequently fall into sin, if they sin knowingly in order to be released from the vow, they sin against the vow; otherwise, if they sin out of weakness (11).

Eighthly, if someone vows that if they gamble, they will undergo some penalty, it is sufficient for them to subject themselves to that penalty the first time; but if they vow not to gamble under such a penalty, then, whenever they gamble, they must give the penalty; except if, while gambling, they are completely forgetful of the vow (12).

31. Ninthly, if someone makes a disjunctive vow, and afterwards chooses to fulfill one part of it, they are bound to fulfill that part, even if the other part becomes impossible after the election. Conversely, if one part becomes impossible before the election; for then they are bound to nothing, provided that the delay in choosing was not blameworthy. Nevertheless, once the election has been made, it is probable that they can always choose the part they prefer (13).

Tenthly, if someone vows to hear Mass daily, they are probably not obligated to hear two on a feast day. If someone vows to recite the Rosary, it is sufficient to recite a third of it; and they certainly fulfill the vow if they recite it with a companion. If someone vows to fast on every Saturday, they are probably not obligated to do so if that day happens to be the Nativity of the Lord; provided that they have not expressly promised this (14).

Eleventhly, if someone fulfills the works of a vow without remembering the vow, they are not obligated to do anything further; because everyone

has a general will (1).

(1) Book 3, page 210, see question here.
(2) Ibid., see Note.
(3) No. 213.
(4) No. 212.
(5) No. 214.
(6) No. 215.
(7) No. 216.
(8) No. 217.
(9) No. 219.
(10) No. 218.
(11) Ibid., see "But, if."
(12) No. 225.
(13) No. 224, Note 2.
(14) No. 224, see question here.

[*Latin ed. p. 133*]

OF VOWS. 121. To satisfy debts by works, and afterwards, out of devotion: thus, commonly, Lessius, Sanch. Laym. etc. (1). And, generally speaking, he who has probable reasons for having satisfied a vow is not bound to do anything further, as Lugo, Laym. Ronc. Bossius, Viva, and Salm. Carden. Bardi, etc., say (2). But you will say: Surely, he is bound by the vow, and it is doubtful whether he has fulfilled it. But a distinction must be made between doubt about the fact and doubt about the law. If someone makes a vow, and then doubts whether he has fulfilled it, he is indeed bound to fulfill it; just as one who is certain of a debt, and doubtful about payment, is bound to pay, because a doubtful payment does not equal a certain debt. But this pertains to the law concerning the fact; for just as it is certain that a vow was made, so too it is certain that the promised work has been completed. Therefore, the question is whether, after the work has been completed in fact, and a probable satisfaction exists in law, there is still an obligation to fulfill the vow? And we say that, with probable satisfaction having been made, the obligation of the law ceases to be doubtful, and consequently, the doubt also ceases regarding possession of that which was vowed; but a doubtful obligation, which is still dubiously possessed, cannot impose an obligation to perform a certain act. 32. — It is asked: If someone, vowing to fast on a certain day, after that day has passed, is he then bound by the vow? He is not bound if the day is appointed to end the obligation, which is presumed to be the case in personal vows, as stated above. Otherwise, it should be said that the day is appointed to solicit the obligation, as is presumed in real vows (3). 33. — It is asked: How much delay is required for someone postponing the fulfillment of a vow to sin

mortally? If the vow is perpetual, as is the vow of religion, he sins gravely (as the Doctors say) if he delays it without a just cause for more than six months; for if he is a young man, he may, for a just cause, lawfully delay it for two or three months. But if the vow is for a time, as are vows of pilgrimage, the Rosary, etc., Castropal. Salm. Trul. Garzia, and Croix say, he sins gravely if he delays it for two or three years (4). An indeterminate vow (e.g., reciting the Rosary daily) is also understood as perpetual (5). In a case of doubt as to whether the vow is for a year or a month, it suffices to fulfill the lesser obligation, as in chapter "Ex parte," concerning censuses (6). 34. — It is asked: To what is one bound who vows to enter religion? If he simply vows to enter religion, he is bound to enter it, and also to remain in it; otherwise, if he leaves without a just cause, he would sin gravely, unless he understood that he was only incurring danger. However, it would be a just cause to leave if he found there a way of life to which his strength was not equal; or if he experienced there a grave and prolonged sorrow. But if he also vowed to profess, he is also bound to do so, even with his great inconvenience; provided that a completely intolerable state of the religious life does not befall him. It should also be noted that if someone has vowed to enter religion, but has not been admitted to a monastery in the province, he is not bound to go outside of it. And if she is a woman, she is not bound to leave her country, if there are monasteries of nuns there (7). 35. — The obligation of a vow is first removed by a change in the matter, as if a new, or unforeseen, circumstance arises, which, if it had been known beforehand, the vow would not have been made (see n. 23); or if the matter becomes useless or impossible. If, however, the vow can be fulfilled in part and conveniently, it should be fulfilled (8). Secondly, it is removed by... (1) Lib. 3. n. 224. in fin. v. Si quis. — (2) N. 224. in fine et l. r. n. 76 — (3) Lib. 5. N. 220. — (4) N. 221. — (5) N. Ibid. n. 221. v. Votum. — (6) Ibid. — (7) Lib. 4. ex n. 72. — (8) Lib. 3. n. 225.

[*Latin ed. p. 134*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE, namely, concerning authority, irritation, commutation, or dispensation.

36. Irritation [the annulment of a vow] can be exercised by all who possess a position of authority, such as parents, guardians, prelates, husbands, and others, as stated in n. 19. This is true even if the vows were made in the future, that is, not yet pronounced by the child, ward, etc.; and even if there is not a sufficient reason for the irritation, at least such an irritation without a cause is not a grave sin (1). Therefore, a father, and a paternal grandfather in the absence of the father, and even the mother (provided the father does not object) can irritate all the vows of both minors (even if there is doubt as to whether the vow was made before or after puberty) and adults, provided the vow is real, even if the adult is of a younger age, as long as at that time he does not have his own property; if the vow were

personal, they can also irritate it, since it would be to the detriment of domestic governance. The same applies to a guardian and curator (2). It should be noted that when a vow is made during the time of minority, the father can irritate it, even if the son has become an adult, provided the son does not ratify it, knowing that the vow was infirm (3). Indeed, prelates of religious orders, even if local, can irritate all the vows (except the vow of entering a stricter religious order) of their subordinates, provided that the vow has not been approved by a higher prelate; for the vows of novices can only be suspended. This is also conceded by many Doctors, such as Suarez, Bona, Filicaja, Salm, etc., to abbesses (but not dispensation) (4). However, it should be noted that all vows made before profession are extinguished by it (5). Also, husbands can irritate all the vows of their wives, even if they were not detrimental to the family or marriage, as Sotus, Sanchin, Prado, Salmant, etc., strongly assert (6). And also, vows made for life after the death of husbands, e.g., of religion or chastity, as Sanchin, Soto, Salmant assert, against Navar and Cajetan (6). However, vows made before marriage cannot be irritated by the husband, but only suspended to the extent that they were detrimental (7). But the vows of wives cannot be irritated by their husbands, unless they are detrimental, such as a vow of a long journey, and also a vow not to ask for what is due, which, in any case, is invalid by itself, as if it were a matter of an unsuitable subject (8).

37. It should be noted here 1. that, according to St. Thomas, the vows of subordinates are not inherently invalid, but valid, until they are made invalid by superiors; because subordinates, although they must have their will subject to their superiors, are not deprived of it (9). It should be noted 2. that a superior (such as a father, prelate, or husband) can validly irritate the vows of a subordinate, even if he had previously approved them; for he cannot, even if he wished, renounce the power that the law, even natural law, grants to him. It is said "validly," because if he irritates them without a just cause, he would not be excused from a venial sin, but would not commit a grave sin, as Soto, Suarez, Bona, Valentia, Sporer, Peyrin, and others assert (10).

38. However, the commutation of vows can be done by the authority of the Church, at least when the commutation is made for a purpose that is somewhat less demanding, or evidently equal; for if it were evidently equal, several authors say, such as Lessius, Bonacina, Sa, Salmant, etc., it is probable that the commutation can be made by the same person who made the vow. But it seems to me much more likely the opposite opinion.

(1) Book 3, n. 227.

(2) Nos. 229 and 250.

(3) No. 258.

(4) Nos. 253 and Book 4, n. 54.

(5) Book 3, n. 257. See "Not possible."

(6) No. 234.
(7) No. 257.
(8) No. 255.
(9) No. 251.
(10) No. 396.

[*Latin ed. p. 135*]

OF VOWS. There is a negative opinion held by Cajetan, Sanch., Soto, Suarez, Azorius, Laym., and others, along with St. Thomas, who states: "Because a commutation is a certain change of the contract, which cannot be perfected without the consent of him who, in this world, represents God," namely, the prelate. Furthermore, because, once a promise is made, it is considered more pleasing to God that the one making the vow be faithful to it by fulfilling the promised act, rather than another act of equal value. On the contrary, the Doctors commonly admit that it is licitly possible for the same person to make a commutation, if it is done for the better, because less is contained in the better.

It should be noted here that: 1. If the commutation is made for a better work, no cause is required; otherwise, a cause is required. Furthermore, for a just cause, a diminution of the danger of transgression is sufficient, and even a greater inclination of the subject is sufficient; and if the work is dubiously equal, a notable inconvenience in fulfilling it is sufficient. However, if the work is changed to a worse one, it is probable, according to Sanch., Tamb., Candido, etc., that it is validly and licitly fulfilled by doing less, if it is subsequently supplemented by another act (2).

It should be noted that: 2. He who has the power to commute vows cannot commute except to an equal one, so that a notable and manifest excess does not appear, according to common opinion (3). It is more probable that real vows can be changed into personal ones, and personal ones into real ones, as say Suarez, Lessius, Laym., Castropalus, Salmeron, etc. (4).

It should be noted that: 3. Once a commutation of a vow has been made, it is always licit to resume the original work, even if the commutation was made for the better, provided that the second vow is not accepted as a new one, as rightly say Castropalus and Prado, etc. (5). But if the changed work were ever to become impossible, it is asked whether the original vow should be resumed? It should be affirmed, if the commutation was made by one's own choice, otherwise if by ecclesiastical authority; and this also if the work becomes impossible through one's own fault (6).

It should be noted that: 4. He who has the power to commute for others (the same applies to dispensation) also has it for himself, as taught by Suarez, Azorius, Sanch., Salmanticensis, Prado, etc., from St. Thomas, who (7) expressly teaches that the prelate can dispense with himself in a vow made (8).

39. — For a dispensation, a greater cause is required than for a commutation. Sufficient causes for dispensation are: 1. the good of the community, or the Church, or the family, or of the subject himself; for example, if it were judged to be of greater benefit to him, as is stated in chapter *Magna* on vows; or if he were in grave danger of transgressing the vow, or if he were troubled by scruples; 2. a notable difficulty in fulfilling the vow; 3. imperfect freedom and deliberation, e.g., if someone vowed when he was an adolescent, or under the impulse of anger, or under an internal fear, such as a fire, shipwreck, etc., or under an external fear, but a slight one; 4. if the impulsive cause of the vow ceases (9).

40. — It should be noted that: 1. If a just cause truly existed, but the prelate dispensed with it in bad faith, believing it to be unjust, the dispensation is probably valid, even if granted by a delegate, as say Suarez, Pontius, Sanch., etc. (10). On the contrary, if the prelate dispensed with it in good faith, but the cause was certainly not sufficient, the dispensation is null, according to the truer opinion; observe that it is stated in book 2, number 53. It is certainly stated that, in doubt, possession holds for the value of dispensation (11). If, however, the cause was not sufficient for dispensation, it can be granted, with some commutation added (12).

(1) Book 3, number 244.

(2) Ibid., and number 245.

(3) Number 247.

(4) Ibid., Note here.

(5) Number 248.

(6) Number 249.

(7) 2-2, question 285, article 8.

(8) Book 3, number 149, last line.

(9) Numbers 252 and 255.

(10) Book 1, number 191.

(11) Book 3, number 251.

(12) Number 254.

[*Latin ed. p. 136*]

TRACTATE V. ON THE SECOND PRECEPT OF THE DECALOGUE. 41.—It should be noted that if a vow has been made for the benefit of a third party, and that third party is specifically designated, such as a particular poor person or church, the vow cannot be dispensed with as long as it has been accepted by that poor person or the rector of that church. However, if the vow was made for an unspecified poor person, it can be dispensed with, even if it has already been accepted by some poor person. Many Doctors, such as Cajetan, Navar, Trull, and Henry, hold this opinion with probability (contrary to Suarez, Sanchez, etc.), concerning a vow made primarily for

the honor of God, and secondarily for the benefit of a third party, with a particular consideration, e.g., the poverty, piety, etc., of that third party, because in such a case the poor person does not acquire a true right to the promised thing; or, if they do acquire it, they acquire it conditionally, depending on the will of God, to whom the promise was primarily made (1). However, it should be upon noted that this applies only to promises that are entirely gratuitous, and not to reciprocal agreements, as occurs in vows and oaths of perpetual commitment made in some congregations; for in such cases, they take on the nature of a contract, as stated above in n. 19, with the authority of Pope Benedict XIV (2). 42.—It should be noted that the power to dispense with vows resides with all prelates who have ordinary jurisdiction in the external forum, such as: 1. The Pope with respect to all the faithful; 2. Bishops with respect to their subjects: but not their vicars, nor parish priests, nor confessors; 3. Regular prelates, both with respect to professed members and novices; even if the vow was made in secular life (as Lessius, Sanchez, and Busembach say); at least they can suspend it to the extent that it prejudices the new state of life (3); 4. Mendicant confessors, who, with the permission of their superiors, can dispense with vows made by secular individuals, even outside of confession, according to the common opinion of Lessius, Navar, Pal, and Salm, etc. (4). They can also dispense with the vow to enter a stricter religious order. This has also been granted to bishops, who, with their subjects who have a vow to enter a particular religious order, in which observance is practiced, can dispense them so that they may enter a religious order of lesser observance: Soto, Lessius, Sanchez, Ledesma, Salm, etc. (5). 43.—All of the above who possess ordinary power can certainly delegate it to any cleric who is at least initiated with the tonsure. And those who can dispense with vows can also do so in their own name: Suarez, Sanchez, Lessius, Bonac, Laym, Cajetan, Pontas, Castropal, etc., with St. Thomas, 2.2, q. 285, a. 8, in fine (6). It is then questioned whether those who have a delegated power to dispense with vows can also dispense with oaths? The first opinion says no, because the bond of a vow differs from the bond of an oath; and therefore, by the style of the court, the power with respect to oaths is specifically granted. Thus, Lessius and Salm, with Azor, Sanchez, Bonac, and Ledesma (7). The second opinion, however, affirms that oaths, although they are different bonds from vows, are nevertheless, in order of dispensation, considered as vows, as stated in the text of the law concerning a corrupt servant, where: "What is arranged" in one of the equivalent parties, is considered arranged in the other. Furthermore, that special concession from the style of the court is made for greater caution. Thus, Cajetan, Suarez, Pontius, Castropal, Prado, Aragon, Trullench, etc., apud Samant, cap. 3, n. 4. Although this second opinion is quite probable, the first opinion must nevertheless be held, which is equally probable; (1) Lib. 3, n. 255. — (2) Ibid., see Note. — (3) N. 257, see "Quaeritur" at the end, and 256. — (4) N. 557, see "Imo." —

(5) N. 257. — (6) N. 256, see "Quaer." — (7) Lessius, l. 2, cap. 32, num. 60. Salm., de juram., e. 5, n. 3.

[*Latin ed. p. 137*]

ON VOWS. 125. For, once an obligation under oath has been incurred, it cannot be annulled by a dispensation that is only probably valid. 44. Whether a bishop can dispense with the vows of pilgrims who are staying briefly in the diocese; the more probable opinion is that he cannot, unless they are staying there for a significant portion of the year. But the contrary opinion is not improbable, as Suar., Pontius, Castropal., Sanch., and Salmant. state, because (they say) even those who are staying elsewhere for a short time are subject to the bishop of the place, so that they are bound by the laws of that place where they are found. See what is said in section 2, paragraphs 41 and 42. 45. It should be noted that the dispensation for five specific vows is reserved to the Pope, namely, the vows of religion, perpetual chastity, three pilgrimages to the Holy Land, to Rome to the tombs of the Apostles SS. Peter and Paul, and to Santiago de Compostela to the shrine of SS. James. However, in cases of urgent necessity, and when it is not easy to appeal to the Pope, if there is a risk of serious harm, whether spiritual, such as the violation of a vow, scandal, quarrels, or another sin, or temporal harm, such as serious defamation of a woman, etc.; then, even the lower prelates, with proper authorization, can grant dispensations in these cases (1). 46. In many cases, however, these specific vows are not reserved, and 1. if they are made under duress; 2. if they are made out of fear, even slight fear, because in such cases they are not made with full freedom; 3. if the vow is not perfect in its matter, as in the case of a vow of chastity, if it is a vow not to marry, not to engage in fornication, not to have marital relations, and also to abstain from sexual intercourse, when the person making the vow does not intend to promise abstinence from the act of intercourse, but only to preserve the appearance of chastity. Thus, even a vow of chastity for a time, or a vow to vow chastity or to enter a religious order, is not reserved, because this is not a vow of chastity that has already been made, but one that is to be made. Thus, a vow to go to Rome is not reserved, unless it is made for the sake of devotion, especially to visit the tombs of the Apostles. Nor are the circumstances of the vow reserved, such as traveling on foot, or begging, or within a month (2). Nor is a disjunctive vow reserved, such as either religion or fasting, and this even if it is a reserved part of the vow, as Salm. and many others probably say, because even after a choice has been made, the person making the vow can always choose the other part of the vow again (3). However, in a vow of chastity made after marriage, both bishops and mendicants can certainly grant dispensations, even if the vow was made before the marriage (4). 47. It is doubtful 1. whether, just as a vow is reserved, so too is a sworn oath of chastity? Some Doctors affirm this, because a sworn promise includes a vow, which is nothing other than a

promise. But a better answer is given by others, that when someone intends to bind himself with two bonds, namely a vow and an oath, he remains bound by the reserved vow; otherwise, it should be said if someone intends to bind himself only by the bond of an oath, wanting his purpose, or his non-obligatory promise, to become irrevocable by an oath, not by the obligation of a vow, but by the oath; which, as St. Thomas says (5), involves a lesser obligation than a vow. Thus, Sanch., Valent., and Lopez. And in the case of an oath, (1) Lib. 3, n. 258, see Note I and II. —(2) n. 258, Note III. —(3) n. 224, see Query. —(4) Lib. 6, n. 1128. —(5) 2a, q. 89, a. 8.

[*Latin ed. p. 138*]

TRACTATE VI. CONCERNING THE THIRD COMMANDMENT.

126. Whether one is obligated by both a vow and an oath, or not, is understood in such a way that if one is bound by a vow, it is not understood that one is bound by both, according to the commonly accepted rule of the Doctors, that a doubtful vow does not obligate (1).

48. It is doubted whether, when a reserved vow is changed, the reservation remains with the changed matter? Some affirm; but the common opinion is to the contrary, because although the changed matter carries with it the same obligation of the first vow, nevertheless, since it is not itself reserved, it does not induce a reservation, which is attached to the original matter (2).

49. It is doubted whether a penal vow, or a vow conditioned on the future practice of chastity, religion, or three pilgrimages, is reserved? The more probable opinion, according to Tolet, Castropal, Prado, Salmant, Sanch, etc., is negative; because such vows do not proceed from a perfect intention towards virtue. However, it should be said differently, if the vow was made for the sake of a pure intention towards virtue, and the condition is only added so that the vow is valid at the time when it is judged that the impediment has been removed, preventing its observance, e.g., when someone vowed to enter religion on the condition that his mother should die: for in that case, he is truly moved to vow by the desire for perfection; but because he cannot fulfill it without abandoning his mother, he adds a condition, which in strictness is not a conditional conjunction, but rather an adverb of time, indicating when (3).

50. It is doubted whether the Pope can dispense in the vows of clerics in the sacred orders, and of religious? With regard to clerics, it is more probable, according to St. Thomas, and the common opinion, that he can, provided there is a most urgent reason (4). It is said of clerics, but not of priests, as the common opinion holds (5). And just as he can with clerics, so too it is more probable that he can with religious (6).

TREATISE VI. CONCERNING THE THIRD COMMANDMENT. CHAP-

TER I. CONCERNING THE OBLIGATION OF THIS COMMANDMENT.

1. Whether this commandment is today ecclesiastical, or divine, and whether it obliges the infidels.

2. Who sins on a festive day.

3. Who can institute festivals.

4. The obligation to listen to sermons.

5. The obligation to preach sermons.

6. Concerning children, etc.

1. BEFORE we proceed to examine the particular obligations that this third commandment induces, several things must be noted. And 1. that the third commandment, as regards the duty of honoring God at a certain time in life through some act of worship, is and always has been divine and natural. But as regards the time prescribed, namely the Sabbath in the Old Law, and Sunday in the New, it was ceremonial and is now ecclesiastical, according to the common opinion (1).

(1) Lib. 3. n. 259. v. In dubio.

(2) N. 260.

(3) N. 261.

(4) Lib. 6. 1059.

(5) N. 808.

(6) Lib. 3. n. 256. v. Quæritur.

[*Latin ed. p. 139*]

OF THE OBLIGATION OF SUCH A PRECEPT. 127 St. Antoninus, Navar; Azor; Suarez; Cajet; Sanchez, Salmant; Cardenal, and others, with St. Thomas (1), and the Roman Catechism (2). From this, it follows that, although the Church cannot generally dispense from this obligation to offer some form of worship to God, it can nevertheless change, and even dispense from, the observance of Sundays and other assigned feasts, as is evident from chapter *De Feriis* (3). From this, it also follows that it is probable that it is not permissible to impose servile works on infidels who are outside [the Church's jurisdiction], and therefore are not subject to the Church.

2.—Note 2. According to the opinion, also common to St. Thomas (4), St. Antoninus, Soto, Coninch, Sanchez, Salmantic, Covar, Bonac, Filliuc, etc., in this third precept, internal worship through acts of charity and contrition is desired, but not imposed, as some believe. Only external worship, namely, hearing Mass, and abstaining from servile work on feast days, is prescribed; for although the sanctification of the soul is the end of the precept, nevertheless, the end of the precept does not fall under the precept, as the common opinion teaches with St. Thomas (5), who says: "For the end of a precept is not the same as that of which the precept is given. And this is confirmed

by the Roman Catechism (6), which says: 'This external worship which is due to God from us is prescribed by the law.' And for this reason, with the praised St. Thomas (7), and the common opinion of Navar, Soto, Sylvester, Cajet, Suarez, we say that it is not true (as some believe) that a person who sins on a feast day commits a double sin (8).

3.—Note 3. Bishops can establish feasts in honor of a saint (but not a blessed), as is stated in chapter *Conquestus, de fer.* (9), provided that the clergy and the people are in agreement.

4.—Note 4. On feast days (speaking in general terms), there is no obligation to attend a sermon; for in chapter *Sacerdotes, dist. 1, de consecr.*, nothing is prescribed except that bishops and pastors should preach on Sundays and more solemn feasts, either by themselves or through others who are suitable, and that during Lent, at least three times a week, they should have a sermon, with the addition: *if they deem it necessary* (10). This is said, speaking in general terms; however, those who are ignorant of the principal mysteries or matters necessary for salvation are, of course, obligated to attend a sermon, or rather, a catechism (11).

5.—It is pertinent to note that, according to the Council of Trent, Session 5, chapter 2, concerning reforms, it is prescribed to bishops that they should preach on Sundays and more solemn days, either by themselves or through others, if they are hindered. We also read that the same obligation is imposed on pastors with these words: "That they may nourish the flock entrusted to them with salutary words, teaching the things necessary for salvation, and with brevity and clarity, declaring the vices which they ought to avoid and the virtues which they ought to follow" (12). From this, Barbosa, Salmantic, and Ronc reasonably argue that a pastor gravely sins who omits to preach for an entire month or for three consecutive weeks (13). However, this applies to pastors, not to bishops, who, according to common law and its interpreter, are not required to preach so frequently, because of the many kinds of business that they must attend to, and which others can easily handle; thus, the duty of preaching can be entrusted to others: to which the Council allows bishops to satisfy, if they are hindered (14).

(1) 2-2, q. 122, a. 4, ad r. et 4.

(2) 3, p. in 3. præcept. dec. n. 4, 6 et 19.

(3) Lib. 3, n. 263 et 265.

(4) 2-2, q. 122, a. 4.

(5) 1-2, qu. 100, a. 9.

(6) Part. 3, de tertio præcepto, n. 1.

(7) In 3. sent. dist. 37, q. 1, a. 5, q. 2, ad 1.

(8) Lib. 3, n. 273.

(9) N. 266.

(10) N. 308.
(11) N. 266.
(12) Lib. 4, n. 127, dubit. 3, v. Hinc.
(13) N. 266.
(14) Lib. 4, n. 127, dubit. 3, v. Hinc.

[*Latin ed. p. 140*]

TRACTATE VI. ON THE THIRD COMMANDMENT OF THE DECALOGUE. 6. — It should be noted that all the faithful who possess the use of reason are bound by this third commandment, which ordinarily is attained after seven years of age. But are children who reach the age of reason before seven years bound by it? See what is said in treatise 2, number 37. CHAPTER II. ON ABSTINENCE FROM SERVILE WORKS. POINT I. ON WORKS PROHIBITED ON HOLY DAYS. 7. Servile, liberal, and common works. — 8. Liberal works performed for profit. — 9. Copying. — 10. Painting. — 11. Hunting and fishing. — 12. Forensic activities. — 13. Markets, sales, and contracts. 7. — Three kinds of works are distinguished by the authorities: bodily works, which are performed by the body and are ordered to the benefit of the body, such as digging, plowing, and the like; and these are called servile because they are usually performed only by slaves. Works of the soul, which primarily proceed from the soul and pertain to the cultivation of the mind, such as reading, studying, playing musical instruments, etc.; and these are called liberal because they are usually performed by free men. Finally, there are common works, which are performed promiscuously by both slaves and free men, such as traveling, hunting, etc. Therefore, only servile works are prohibited on holy days, not liberal or common works (1). 8. — Why is it permitted to study, teach, write, sing, and play musical instruments, and even for the sake of profit, as Soto, Navar, Suarez, and Salmant (contrary to others) say, following St. Thomas (2), who teaches thus: "No spiritual act is contrary to the observance of the Sabbath, for example, if someone teaches by word or in writing." For the intention of the agent cannot change the nature of the work from liberal to servile (3). 9. — Likewise, it is generally held to be permissible to copy scriptures, as Suarez, Bonac, Salm, Sa, Castropal., etc., commonly say, because both writing and copying are ordered to the instruction of the mind. Therefore, many Doctors admit that musical notes, calculations, and even the arrangement of typographical characters may be written down, but not the printing of pages (4). 10. — Doctors generally hold that painting is a servile work, because it requires material action. But the opposite opinion is not improbable, as Laym, Sa, Castrop, Ronc, Anacl, Holzman, etc., say. For painting (unless it involves considerable labor in preparing colors and canvases) seems rather a liberal work than a servile one, since the mind is more involved in it than the hand. At the very least, it is doubtful whether it is liberal or servile, and if it is not liberal, at least it is a common work,

since this activity is performed by both free men and slaves. However, no one doubts that sculpture is a servile art (5). 11. — Hunting with a gun or net, some hold to be servile; but the more common and probable opinion is that it is not, even if it is done for profit. Fishing, on the other hand, seems more servile, because it involves great exertion; otherwise, there would have been no need for a dispensation from the Pope in the case of fishing with hales, as is mentioned in chapter 3 on holy days. However, if fishing is done with moderate effort, it is more likely to be permissible (1) Lib. 3, n. 272 — (2) 2-2, q. 122, a. 4, ad 3. — (3) 1-3, n. 278, v. Quer. 1. — (4) N. 279. — (5) N. 280.

[*Latin ed. p. 141*]

OF CASES IN WHICH THEY ARE ALLOWED, etc. 129. It is excused by custom, as Castropal., Filliuccius, Sanchez, Holzm., etc., say (1). 12. Besides servile works on feast days, forensic works are also prohibited; under this name are understood: 1. all acts pertaining to the forum concerning the decisions of causes, such as the citation of parties, the compilation of proceedings, the examination of witnesses, the rendering of judgment, or the ordering of its execution. Therefore, such works are prohibited on feast days, unless necessity or piety otherwise demands, as is prescribed in the last chapter on feast days. However, it is not prohibited to excommunicate, to grant dispensation, or to exercise another function of jurisdiction, which does not require judicial clamor (2). 13. Under the name of forensic works are understood 2. prohibited markets, unless they are for necessary goods of daily use, such as food and drink; and also candles, footwear, and similar items, the price of which is fixed. However, today, by custom, general markets (and sometimes even particular ones) are permitted, and so are the sales of other things, except those sold in public offices, as Nav., Sanch., Cast., Salmant., La-Croix, etc., say, because these are prohibited by canon law due to the risk of scandal (3). Also, Doctors are permitted to sell something to merchants behind closed doors, if the buyers are in urgent need of it at that time (4). Thus, also, by custom, in many places, contracts of lease, exchange, and negotiation, and the like, which do not require judicial clamor, are permitted (at least by general license of the ordinary) (5).

POINT II. OF CASES IN WHICH SERVILE WORKS ARE ALLOWED ON A FEAST DAY.

14. The following are excuses: I. dispensation from the Pope, or a bishop, or a parish priest.

15. II. Custom.

16. 17. III. Piety.

17. IV. Charity.

18 to 21. V. Necessity.

22. Whether for great profit, etc.

23. In order to avoid idleness.

24. VI. Utility.

25. VII. Smallness of the matter.

26. He who imposes work on ten servants, etc.

14. These are the reasons: I. dispensation from the Pope for the entire Church, or from a bishop for his diocese, or from a capitular vicar, when the see is vacant (but not from a vicar of the bishop); provided that there is a just cause, speaking of common feasts; or from a regular prelate with respect to his religious or domestic members. A parish priest can also grant dispensation (even when the bishop is present) in a particular case, but only for a time, and in those cases in which custom allows him to grant dispensation, namely, in matters of fasting, and working on a feast day, as Suar., Sanch., Viva, Salm., Spor., etc., commonly testify (6).

15. II. Custom. Therefore, those who are transported in a sedan chair by attendants are excused (7). To drive vehicles or animals laden with goods, Roncagl., Viva, Salm., Mazzotta (8). To irrigate crops, to turn or separate grain (9). Thus, also, by custom, it is permitted on a feast day to kill animals and to skin them, when it cannot be done on the preceding day, as happens in more frequent cities, but not in towns, unless it is during the summer, or if several feasts coincide. Thus, also, by custom, it is permitted to grind grain (10). And likewise, it is permissible to prepare and cook food, even if it is superfluous, Azor., Castrop., Viva, and Mazzotta, etc. (11).

(1) Lib. 3, n. 285.

(2) N. 284 and 287.

(3) N. 285 and 286.

(4) N. 303, ad 14.

(5) N. 286, v. An autem.

(6) N. 288.

(7) N. 275.

(8) N. 276.

(9) N. 290.

(10) N. 277.

(11) N. 298.

[*Latin ed. p. 142*]

130 TRACT. VI. ON THE THIRD PRECEPT OF THE DECALOGUE. Thus, it is also a question whether one may be shaved or have new shoes made on this day; some Doctors say that the custom of shaving the beard is present everywhere; others doubt it. However, others say that it is

probable that it is universally permitted for rustics to be shaved on this day, because this day is the only time when they can be shaved; and they also say that barbers may be excused if, when they refuse to shave on holy days, a notable loss of profit would result (1). Many authors say that a doubtful custom cannot be excused, but a probable one can, as if attested by some eminent Doctor: thus, Salmanticenses, Salas, Granada, Viva, Mazzotta, etc. (2). With these things established, I would like to mention here what Saint Charles Borromeo decreed in the first and third councils of Milan for the vendors of necessary goods, and what Pope Benedict XIV, when he was Archbishop of Bologna (3), decreed for both these vendors and barbers, namely, that the hour at which such shops should be closed should be prescribed; therefore, the aforementioned Pope ordered that a sign indicating the hours at which these shops should be closed be affixed, so that, according to the variety of times, they should be closed immediately at the sound of the larger bell. Oh, if this were done everywhere by bishops! Surely, people would not seem so forgetful of their own salvation, that they come to the sacraments scarcely once a year, and almost unwillingly, and never hear the word of God, which is the food of Christ's sheep. 16.—III. Piety. With regard to this, works that are closely related to divine worship are permitted, such as the ringing of bells, the carrying of statues in processions, and also (at least by custom) the adorning of altars and churches, the preparation of hosts, the cleaning of temples, the construction of tombs, or the erection of structures for the exposition of the Most Holy Sacrament. However, it is not permitted to erect booths for viewing processions on holy days, unless there is no other time available (4). 17.—Here, it is doubted whether it is permissible to work on a holy day for the sake of piety, such as sewing clothes for the poor, cultivating the land of the church, or building or repairing it, or bringing stones for that building. Some permit this, because in cap. Conquestus, de fer., it is already permitted to perform forensic works if necessity or piety suggests; therefore, the same can be said of servile works; for in similar cases, where the same reason applies, the same disposition of the law applies. However, others more probably deny this, unless there is an actual and serious necessity, or unless there is permission from the bishop; because the aforementioned works only remotely contribute to divine worship. However, the Salmanticenses, with Suarez, Soto, Cajetan, Castro, Sanchez, Bonacini, Trullius, etc., say that in our time, when almost all pious places are in need, these works can well be performed to help them (5). IV. Charity; therefore, it is permitted to attend to the needs of the poor, to help them, etc. (6). 18.—V. Necessity, either one's own or that of another, whether of the soul or body; if, namely, something cannot be omitted without serious inconvenience or detriment. Therefore, servants and other household members, etc., may be excused if they are forced by their masters to work for fear of serious harm, e.g., if they are dismissed

without any hope of easily and quickly finding someone to serve. The same applies to wives and children forced by their father to work. Suarez, Azorín, Palafox, Salmanticenses, etc. (7). Thus, the poor are also excused if they must work on a holy day for their own sustenance and that of their family, and also to repair their own clothes or those of their relatives (8). (1) Lib. 3. n. 290. — (2) Ibid. Note this. — (3) Notificat. 43, — (4) N. 291 et 293. — (5) N. 293, — (6) N. 294. — (7) N. 296, — (8) N. 297.

[*Latin ed. p. 143*]

OF THE CASES IN WHICH [CERTAIN WORKS] ARE PERMITTED, ETC. 131 19.—Moreover, necessity also permits working as a pharmacist, a glassblower, an ironworker, a bricklayer, a lime burner, and those whose work, once begun, cannot be interrupted without damage (1). Therefore, it is also permitted to shoe horses for travelers, to repair wagons for those who would otherwise have to cease work the following day, to repair roads and bridges, wells, etc. (2). Likewise, it is permissible for tailors (if they have no other time) to sew clothes for weddings or funerals, and similar occasions; for example, if an outsider needed clothes in the place where he is found, or if others were expecting clothes that had been promised, and if they did not receive them, they would suffer great harm. The same applies to shoemakers (3). 20.—It is also permitted for bakers to make bread on holidays, both due to custom and due to the needs of the people; provided that there is always a risk that the people may be deprived of bread due to some lack. Tamburinus doubts whether custom allows everyone to make bread on these days indiscriminately, unless there is a confluence of many holidays, and the bread baked beforehand would be less suitable for consumption; or if bread is necessary for that day. And we say the same about pastries, or sweetmeats (4). 21.—Likewise, in order to avoid damage, it is permitted to collect grain, or hay, and (at least by custom) even fruits, even if they are not necessary for use on that day, in order to better preserve them; especially if there is a risk of imminent rain, and therefore, in many regions, olives, chestnuts, or other wild fruits are usually collected on any day. Generally, any work that is necessary for the daily use of the family is permitted, such as cleaning the house, laying beds, washing kitchen utensils, etc. (5). 22.—It is doubted 1. whether a loss of great profit can excuse someone from working on a holiday? Many deny this, such as Salm., Roncaglia, etc., because they say that suffering a loss is one thing, and not making a profit is another. But many other serious Doctors, such as Suarez, Castrop., Cajet., Sanch., Navar., Armilla, Holz., Bonacina, Viva, Elbel, Mazzotta, etc., probably excuse it, because, according to the law, not making a great profit is equivalent to suffering a great loss. At least in this circumstance, it can be said that the precept of the holidays, which is human, does not obligate with such inconvenience (6). Likewise, many Doctors excuse it even from the sacred duties; thus Suarez,

Castr., Mazzotta, etc. On the other hand, I do not approve of the opinion of some who say that it is permissible to go hunting on the Sabbath, even if one foresees that he will miss Mass on Sunday. However, many authors say otherwise about one who would set out on Thursday; and otherwise about those who travel by duty or transport goods (7). 23.—It is doubted 2. whether it is permissible to work on a holiday in order to avoid idleness? Some Doctors deny this; others affirm it, such as Laym., Sylo., Sa, Mazzotta, etc., when someone would otherwise be in danger of sinning; for (they say) if necessity excuses something that concerns the comfort of the body, all the more should it excuse something that benefits the good of the soul. I believe this opinion to be probable only in the case where temptation cannot be overcome in any other way than by applying oneself to work, but I do not know if such a case can morally occur, at least it will be very rare (8). (1) Lib. 3. n. 300. — (2) Ibid. — (3) N. 305. — (4) N. 299. — (5) N. 298. v. Permittunt. — (6) N. 301. cum Castrop. tr. 3. de Leg. d. 5. p. 3. 2. n. 3. et Suar. eod. lit. l. 6. c. 7. ex n. 9. — (7) N. 301. v. Ob eandem, — (8) N. 302.

[*Latin ed. p. 144*]

132 TRACT. VI. ON THE THIRD PRECEPT OF THE DECREE. 24. — VI. The utility or splendor of public joy is excused; therefore, it is permissible to erect theaters, make garments, light fires, etc., on victories, birthdays, or the arrival of princes; provided that these things could not have been avoided. As long as custom permits such things, they are morally necessary for the peace of the people (1). 25. — VII. The smallness of the matter excuses at least from mortal sin. But the question arises: 1. What is the gravity of the matter in this case? Some say three hours, but this opinion is too lenient. Others say one hour, and this is too strict; others commonly say two hours, and many others say somewhat more, namely two and a half hours, as in Valencia, Granada, Henriq. Bassus, La Croix, etc. Furthermore, Viva asserts that this is the more common opinion: thus, Viva and Mazzotta say that even a longer period of time can be excused if there is some necessity that would otherwise not be sufficient to excuse it (2). 26. — The question arises: 2. Does the lord sin gravely if he imposes labor of half an hour on ten servants? If the labor imposed is performed at the same time, according to the common opinion, he does not sin gravely. There remains a doubt as to whether this is the case if the labor is performed successively. Some hold that it is a mortal sin; nevertheless, the opposite opinion is more common, with Sanchez, Bonac, Salmant, Roncag, Trullench, Viva, etc., holding that it does not exceed venial sin; and it is quite probable, for such a lord cannot sin more than the servants themselves, of whom none sin gravely for that labor. It would be different if the lord ordered the same servant to perform more labor within the same day, because those labors would then coalesce more frequently to constitute a grave matter (3). It should be noted here, finally, that in forensic works, the gravity of the matter is not so much

derived from the quantity of time as from the quantity of work. CHAPTER III. ON THE OBLIGATION OF ATTENDING MASS. POINT I. HOW THIS OBLIGATION IS TO BE FULFILLED. 27. Concerning intention. — 28. Concerning attention. — 29. He who, while attending Mass, recites the Office, etc. — 30. He who celebrates. — 31. He who confesses. — 32. He who dozes or collects alms. — 33. Concerning the smallness of the matter. — 34. He who attends two and a half Masses. — 35. Concerning the place from which Mass can be heard. — 36 and 37. Concerning chapels, and where the bishop can celebrate. — 38. Whether the bishop can grant dispensation to celebrate in private homes. 27. This precept of attending Mass on all feasts is held from canon 1 of "Omnes Fideles" and canon 1 of "Missas de consecrat." It obliges all the faithful who use reason. Two things are required for the fulfillment of this precept: intention and attention. 1. Intention is required, namely that one intends to hear Mass; for he does not fulfill the precept who attends only for the purpose of seeing the church, honoring a friend, etc., or is held there by force; I say by force, because if someone is present out of sacred fear, because of a threat from a father or a teacher, he already fulfills his duty, although he may sin because of a bad will in omitting Mass, if he could. Furthermore, intention is sufficient to fulfill the work commanded, and it does not matter that there is no intention of fulfilling the precept; therefore, he who has already been present at the sacred rite certainly fulfills the precept, even if he was forgetful of the feast day (and the same is said of a vow), (1) Lib. 5. n. 304. — (2) N. 306. — (3) N. 306.

[*Latin ed. p. 145*]

HOW THIS OBLIGATION IS FULFILLED, etc. 133. By a solemn oath, by sacramental penance; but the work promised in a vow, or imposed as penance, must not be applied to another end (1). Indeed, it suffices, even if one had an express intention not to fulfill the precept, according to the most common and probable opinion of Suarez, Lessius, Sanchez, Castrop, Tournhem, Valencia, Vasquez, La Croix, and Salm (2). The reason is that whoever voluntarily performs a commanded work necessarily also fulfills the precept. The objection that, just as someone who owes another one hundred and, being aware of the debt, gives that one hundred to him, does not remain free from the debt; so too, someone who does not want to fulfill a precept does not remain free from it, is not valid. For the answer is clear: in the case of a debt of money (the same applies to a debt of a vow), the obligation depends on one's own will, so it is possible for someone, even after making a payment, to still want to remain bound; but in our case, the obligation to attend Mass depends on the will of the Church, so a person cannot impose it on himself, and therefore, when he fulfills the precept, he cannot fail to fulfill it.

28. It is required that there be (at least virtually and in a confused way) attention, namely, that one be aware and attentive to assisting, as

one ought, at the sacrifice that is being performed. Therefore, it does not suffice for someone who attends Mass while sleeping, or with his senses dulled, or who is unaware that it is taking place. The question among Doctors is whether internal attention is required in assisting at Mass. Many authors deny it, such as Suarez, Lessius, Lugo, Coninch, Sylvestri, Medina, Hurtado, Henriquez, Renzi, and La Croix, among others, arguing that, in order for Mass to fulfill the precept, it is not necessary to pray, but it is sufficient to be present morally, intending to offer worship to God. However, the more common opinion, along with St. Thomas, Layman, Bonaventure, Sporer, Salamanca, and others, holds that internal attention is necessary, attending either to God (namely, to his goodness, love, etc.), or to the mysteries of the sacrifice, or to the words and actions of the celebrant; otherwise (as they commonly say), it is sufficient to have, at the beginning, the intention of attending internally, and not to revoke that intention voluntarily, and to avoid being distracted; I say "avoiding" because if someone voluntarily distracts himself, not realizing that he is being distracted from Mass (the same applies to the canonical hours), he still fulfills the obligation; for although this person may voluntarily be distracted, he is not voluntarily distracted from Mass. I believe that the second opinion is more probable and should be followed, while I do not judge the opposite opinion to be improbable; at least, given the authority of so many Doctors who support it, the matter is very doubtful, whether there exists a Church law obliging the faithful to attend Mass even with internal attention (3).

29. Furthermore, it is commonly admitted that one fulfills the obligation of attending Mass if he examines his conscience in order to confess, or if he reads a spiritual book (but not a book of history, even if it is spiritual), or if he recites the canonical hours, or if he performs his penance, or if he says another required prayer; because at the same time, one can fulfill two precepts, when the things commanded are not incompatible with each other, as commonly stated by Suarez, Bonaventure, Castrop, Sanchez, Filliu, Sa, Busem, Salamanca, etc., against a few (5). Likewise, those who are preparing to serve at Mass, in order to bring the necessary things to the altar, such as the cruets, hosts, and wine, fulfill the obligation, since those things pertain to the same sacrifice; but this is understood to be the case only if it is not something that is being done for a long time (6).

(1) Book 1, n. 163.

(2) n. 164, and more fully in book 4, n. 176.

(3) Book 3, n. 313.

(4) n. 314.

(5) n. 509.

(6) Ibid.

[*Latin ed. p. 146*]

TRACTATE VI. ON THE THIRD PRECEPT OF THE DECALOGUE. 30.—It is also probable that the celebrant can attend another Mass that is being celebrated simultaneously, because, while he is celebrating, he is already praying. Similarly, it is probable that one satisfies the precept who, while attending Mass, experiences an ecstasy that detaches him from the senses, because the soul is then attending to God. 31.—Does one satisfy the precept by hearing the sacred rites? Many Doctors affirm that this is the case, provided that the person attending is penitent and pays attention to the Mass; thus, Castropal, Reginald, Molfes, Hurtad, La-Croix, Elbel, Pigler, etc., say that by confessing, one honors God, and they say the same about the confessor who hears confessions. However, we hold the opposite view, along with Lugo, Tambur, Bonac, Escob, Salm, because the one who confesses presents himself as a guilty party, not as one offering sacrifice with the priest. Nevertheless, Less and La-Croix absolutely state that it is certainly beneficial for a servant or slave to whom no other time is available to confess, because, in such a case, the Church's consent is presumed. 32.—It is also beneficial, or at least one does not gravely sin, who, while hearing the sacred rites (or reciting the canonical hours), dozes, provided that he pays attention to what is happening (1). It is also probable that one satisfies the precept who, while walking around the church, collects alms, provided that he pays attention to the Mass. However, one who engages in conversation during a noticeable portion of the Mass (whatever Busemb. may say) is, according to the common opinion, not considered to have satisfied the precept, because conversation destroys external attention, which hinders the fulfillment of the precept (2). 33.—It is asked: What constitutes a small matter in the precept of hearing Mass? Some believe that omitting everything up to the Gospel is a small matter. Many, on the other hand, believe that this includes everything, as stated by Azor, Lugo, Suar, Laym, Castrop, Sa, Holzman, Elbel, Salm, etc., even if the Creed is omitted, as Lugo says with others. The first opinion is more common and probable, but I do not consider the second to be improbable, because, according to St. Isidore, Mass originally began with the Offertory. It is also the common opinion with Suar. and others that it is not a grave matter to omit what precedes the Epistle, and what follows after Communion, even if both are omitted. On the contrary, it is commonly held that it is a grave omission to omit from the Consecration to the Our Father, even exclusively; or to omit the Consecration and the Communion. But is it a grave omission to omit the Consecration or the Communion? Some commonly affirm, indeed, they say it is grave, even if the Consecration of one species is omitted. Many others, however, along with Lugo, Suar, Hurt, Fagund, Escob, Tamb, Elbel, etc., deny this; for, as they say, it is not certain that the essence of the sacrifice

consists in the Consecration (as is commonly held) or in the Communion (as Ledesma, Pignatelli, and others with Albert the Great hold); nevertheless, we consider the first opinion to be more probable, as we believe that the essence of the sacrifice consists in both together, namely, in the Consecration and in the Communion (3). Some authors say that, since it is probable that the essence of the sacrifice of Mass consists solely in the Consecration, it is also probable that if someone were to arrive after the Consecration of the last Mass, he would not be obliged to hear the rest. But we hold the opposite, along with the continuator Tourn. and P. Zacchar. in La-Croix (4). The reason is that, since it is also probable that the essence of the sacrifice consists in the Communion, we say that he is certainly obliged to hear the rest of the Mass; for if one cannot completely fulfill the imposed precept, he is certainly bound, if he can, to fulfill it probably, because such an obligation to satisfy the precept is probable.

(1) Book 3, n. 316.

(2) n. 317.

(3) n. 310.

(4) Cont. Tourn. tract. de 3. prec. Dec. c. 3. and P. Zacchar. ap. La-Croix lib. 3. p. 1. n. 608.

[*Latin ed. p. 147*]

HOW THIS OBLIGATION, etc. 135. Since it cannot be certainly fulfilled, it is included in the precept of certainly fulfilling; for if the precept remains in force, it must be fulfilled as best as possible. 34.—It is asked: 2. Does one fulfill the obligation by hearing two half Masses celebrated by two priests? He who hears these parts at the same time does not fulfill the obligation, as is clear from proposition 53, condemned by Innocent XI. But if successively, many admit that it is fulfilled, as Navarrus, Laymannus, Soto, Bonaventure, Sahagún, Castropus, etc., because such attendance is already, not physically, but morally, considered as one complete Mass: and therefore, those two halves are sufficient to fulfill the obligation prescribed by the Church. We do not deny that this is probable, at least externally; but we consider the contrary opinion, with Suarez, Lugo, Azorín, Concinius, Tamburinus, Sporer, etc., to be more probable, if one hears the part up to the Consecration from one priest, and the rest from another; because these two parts cannot constitute one complete sacrifice. We say otherwise if one attends both the Consecration and the Communion of the same priest (1). 35.—It is asked: 3. In what place does one fulfill the precept of attending Mass? It is answered in any public church, even if it is not a parish church, as is now certain from common custom. And one fulfills the obligation by hearing Mass in the choir behind the altar, or through a window that looks into the church, even if the priest is not visible, provided that at least one is aware that it is happening. And it is permissible to be present behind a wall or column of the church, and even outside the church, provided one is

united with the people who are inside the church. Others admit (and not improbably), with Lugo, Escobar, Mazzotti, Sporer, Elbel, Dicastillo, and Gobbi, and Tournely does not dissent, that one can fulfill this obligation from a window of a house, even if there is an intermediate space, provided that the altar is visible, and the distance is small, because in this way one is also, morally, present. Lugo and Escobar admit a distance of 30 paces, but Tamburinus and Gobbi do not allow this (2). 36.—It is said that the church must be public; for in private oratories, not all those who are present at Mass fulfill the obligation, unless they are the owners, or those connected with them, who live in the same house, and are supported by them (although some Doctors admit that brothers and their wives fulfill the obligation, even if they have a separate table and dwelling), or servants who are supported by these owners, although they live outside the house, as Pellizzari, Quarti, Diana, La Croix, Castropus, Tamburinus, and Mazzotta admit (against Barbos, Lezan, etc.). But those who are not necessary family members do not fulfill the obligation, as the indult states (3), and even less so strangers, as Clement XI decreed against the opinion of some (4). 37.—Regarding private oratories, more must be noted here. And 1. that Mass cannot be celebrated in them on certain major feasts, and these are Easter, Pentecost, the Nativity of the Lord, Epiphany, the fifth day of the week of the Lord's Supper, Ascension, the Annunciation, and the Assumption of the Blessed Virgin Mary, the feasts of Saints Peter and Paul, and All Saints' Day. This is according to the decree of the Sacred Congregation. But this limitation does not apply to oratories granted for reasons of infirmity (5). 2. That Pope Benedict XIV, in the bull Cum duo nobiles, in the year 1740, declared that Mass cannot be celebrated in private oratories unless at least one of those to whom the indult has been directly granted is actually present (6). 3. By the same Pope, Lib. 3, n. 311. — (2) N. 512. — (3) N. 519. — (4) See l. 6, n. 359, Note III. — (5) Ibid., v. E, and from another Decree which P. Zaccharia cites in Croix, l. 6, p. 2, ad n. 271. — (6) L. 6, n. 359.

[*Latin ed. p. 148*]

136 TRACT. VI. CONCERNING THE THIRD COMMANDMENT. In the *bulla* *Magno*, dated June 2, 1751, it was declared that, considering the wording of the indulgences, only one Mass could be celebrated in the aforementioned private chapels; and it has already been explained that the phrase "one Mass" means the same as "a single Mass" (1).

4. It is not permitted to administer the sacrament of penance in private chapels without the permission of the bishop, and for a just cause, as is stated in the aforementioned *bulla* *Magno*, § 20. But is the permission of the bishop required to administer the Eucharist? Some deny it; but it is more commonly held that it is required; and it is found that the aforementioned Pope Benedict XIV, in an encyclical letter to the bishops of Poland, dated the same day, June 2, 1751, forbade the administration of Holy Com-

munion in private chapels without the permission of the bishop.

5. This pertains to private chapels granted by papal privilege to certain individuals, and not to those erected by the authority of the bishop, and designated for sacred purposes in seminaries, institutions, hospitals, and even in private homes, provided that there is an entrance from the public road; for in such chapels or oratories, anyone can celebrate Mass and fulfill the precept on any day of the year, because these are truly public churches. The same applies to chapels of religious orders, and to those erected in the homes of bishops or cardinals (2). Bishops, however, can celebrate Mass, and can allow others to do so, in all houses (even outside the diocese) where they are present for the purpose of visitation, or travel, or a stay outside the diocese permitted by law or by the Holy See for a particular reason; this is stated in the *bulla* *Apostolici ministerii* of Innocent XIII, confirmed by Benedict XIII, and found in the appendix of the Council of Rome (3).

38. But can bishops dispense with this requirement so that Mass may sometimes be celebrated in private homes? The answer is that today, by the 22nd session of the Council of Trent, in the decree on the celebration of Mass, and more clearly in the decree of Clement XI, the power that bishops originally had, according to canon 11 of the canons of the Mass, Dist. 1, to celebrate, and to allow others to celebrate, even in the homes of lay people, has been restored; nevertheless, it is a very probable and common opinion, shared by Navar, Suarez, Lugo, Castrop, Vasquez, Coninch, Salm, Croix, etc., that this refers to a perpetual license by way of habit, and not to a license for a time by way of an act, unless there is a particular and temporary just cause, such as illness or another circumstance. Some Doctors admit this only for a certain number of times in the year; but others, such as Holz, Elbel, and Pasqual, allow it whenever there is a special reason, saying that it is only the will of the bishops to grant this license by way of habit, and that they can dispense with it whenever they please, and this is also approved by Gallemart in the aforementioned passage of the Council of Trent, and not unreasonably (4).

APPENDIX ON PRIVATE CHAPELS. It is worthwhile to note here the form of the papal briefs by which private chapels are usually granted; and this is the form: "Clement XIII, to you, N. N., of the diocese of Naples, who (as you assert) are descended from a noble family, so that in a private chapel in your solitary dwelling in the city of N., which is suitably (and with a wall) decorated, and free from all domestic uses, after first visiting and approving the local ordinary, and with the license of the aforementioned ordinary, which license shall endure at his discretion..." (1) (2) (3) (4)

[*Latin ed. p. 149*]

HOW THIS OBLIGATION, etc. 137 "One Mass for each day, provided

that, in the same house, permission to celebrate [Mass] has not been granted to another, by any priest approved by the same ordinary, whether secular or regular, with the permission of his superiors, without prejudice to any parochial rights, and except on the feasts of the Resurrection of Christ, Pentecost, the Nativity of Our Lord Jesus Christ, and other more solemn days, you may celebrate [Mass] in your own home, and in the presence of your family, and also of your distinguished guests; provided, however, that those of your household who are present at the said Mass at the appointed time are not thereby excused from the obligation to attend Mass in the church on days of precept."

We wish that those of your household who are present at the said Mass at the appointed time are not thereby excused from the obligation to attend Mass in the church on days of precept.

Given in Rome.

Now let us examine individually these clauses. To the Diocese of Naples.

The question is asked whether one who has a privilege can use it when he transfers his residence to another diocese. Many affirm this, as Barbosa, Pasqual, LaCroix, and others (1) state, because they say that this privilege is granted not to a place, but to a person, because of their nobility; and therefore, if the same cause exists in another diocese, the privilege also continues. They add that, to the Diocese of Naples, the phrase "Tibi" is not to be taken as a restrictive, but as a demonstrative, i.e., "Tibi qui es diæcesis Neapolitanæ"; and this is for the purpose that another, who perhaps bears the same name, may not usurp the privilege. However, this is contradicted by P. Fortunato of Brescia (2), who cites many authors. The reason is that, now, in the examples of such privileges, unlike what was done in ancient times, the name of the city refers not only to the person, but also to the same oratory, as it is said: "In privato domus tuæ solitæ habitationis oratorio in civitate N. existentes"; and sometimes the name of the diocese is also added. Therefore, just as the privilege is limited with regard to the person, so also it is limited with regard to the place. Furthermore, as P. Brixiensis rightly says (3), and asserts that this is the common opinion, although this is doubtful, it must be strictly interpreted; for, generally speaking, favorable privileges are to be interpreted broadly; but not those that derogate from common law, such as the privilege of a private oratory, contrary to the opinion of Tamb. (4). See what we say about privileges, Vol. 3, treatise 20, no. 7.

Clause II. "That you are of noble lineage." Therefore, it must be noted that, if the condition of nobility is not verified, the privilege is certainly null, since it is stated as a final cause (5). But is it sufficient that nobility is possessed through a privilege, or a dignity, or a grade acquired? Some admit this (6); but P. Fortunato of Brescia denies it, asserting that true nobility must be possessed by birth. In all other respects, a distinction must

always be made between the person and the place.

Clause III. "That in your private oratory in your own house, located in the city of N., which is suitably adorned with a wall, and free from all domestic uses." The question is asked whether one who has been granted this privilege can use it if, by chance, he builds a house in the countryside? Pignat. and Pasq. affirm this, but Ronc. rightly denies it (7), paying attention to the words: "in privato domus tuæ solitæ habitationis."

(1) Barb. de jur. cel. lib. 4. c. 8. n. 16. Pasq. de Sacr. Miss. q. 639. La-Croix l. 6. p. 2. n. 269. cum Sylv. Bonac. et aliis.

(2) A Brixia de orat. domest. pag. 63.

(3) Brix. loc. cit. cap. 3. annot. 1. p. 91.

(4) Tamb. Meth. cel. Miss. lib. 1. c. 6. 2. n. 31.

(5) Vid. Tambur. loc. cit. 2. n. 5.

(6) Pasq. et Cleric. cum Pignat. tom. VI. cons. 98. n. 100.

(7) Ronc. de Sacr. Missæ c. 5. q. 3. v. Quarto.

[*Latin ed. p. 150*]

TRACTATE VI. ON THE THIRD PRECEPT OF THE DECALOGUE. Note here 1. that the words "a wall constructed" do not necessarily mean that four walls are required, but that three are sufficient, and a curtain or cloth can be used for the fourth, which can be opened or closed as needed. According to the custom of Naples, I know that wooden wardrobes have been approved by the Archbishop for such private oratories; however, I always consider it necessary to observe the decree of the Sacred Congregation of [December] 3, 1661, which states: "He who has permission to erect an oratory in his own house, if he wishes to erect a wooden altar there, does not need apostolic permission, provided that the altar is not removable when attached to the wall with a sacred stone, and that it does not bear the portable image of an altar." Note 2. Regarding the word "adorned," the oratory must be arranged in such a way that everyone agrees that it is distinguished from other profane uses. Indeed, St. Paschal says that in such oratories, ornaments should be more splendid than those found in churches, because churches, by their very nature, demand veneration. Note 3. Regarding the words: "By all domestic persons, etc." The Doctors say that, just as one can sleep or eat in a church, so too these things are permitted in an oratory (2); and just as these actions, when performed in a church without the intention of sin, do not exceed a venial sin, as Suarez says with others (3), so much the more is this true of a private oratory. However, if the oratory is regarded as a profane place, the Doctors (4) say that the place becomes unsuitable, and the privilege ceases; at least, as others say (5), it requires a new approval from the ordinary. As for whether it is permissible to sleep on the roof of an oratory, or to perform other profane actions, almost all authorities deny (6), saying

that this is only a matter of convenience, not of precept; for he who sleeps on the roof of a church sleeps outside the church. However, it is true that St. Charles Borromeo forbade this in his diocese. Furthermore, says Father Gatticus (7), it may be permissible in some houses where otherwise there is no other way to provide. Clause IV: "By the ordinary of the place, after first visiting and approving it, and his license shall endure at his discretion." Note here that, once the ordinary has approved the oratory, he cannot prevent it from being celebrated there, as is stated in Barb. (8). However, this is understood to mean that there is no just cause; for if there is a just cause, he can rightly suspend the celebration at his discretion. Clause V: "One Mass for each day, provided that permission to celebrate in the same house has not been granted to another." As stated above, n. 37, the words "one Mass" mean only one, as declared by Benedict XIV in the Bull *Magno*. Furthermore, the words "provided that in the same house, etc." indicate that even if one of the owners has obtained permission for an oratory in his own home, but another owner in the same house has obtained a privilege, it is invalid. Clause VI: "By any priest approved by the same ordinary, whether secular or regular, with the permission of his superiors." Note here that there is no need for special approval to celebrate in (1) La-Croix, l. 6, p. 2, n. 266, and Tamb., loc. cit., n. 8. — (2) Sa, v. Eccles., n. 5, and Tamb., n. 8. — (3) Suarez, *de relig.*, tom. 1, l. 3, c. 5. — (4) Pasq., qu. 618, n. 8, with others. — (5) Tamb., ex Castropolao. — (6) Rone, *de Sacr. Mis.*, c. 5, q. 5, v. Primo, with Pignat. and Croix, l. 6, p. 2, n. 266, with Quarti, and Tamb., n. 9, v. Illud, ex Sanch. and Glossa in c. un. de Cons. eccl. in 6. — (7) Gattic., *de orat. dom.*, c. 55, n. 6. — (8) Barb., *in Trid. Sess.*, 22, Decr. de observ. in cel., n. 19.

[*Latin ed. p. 151*]

THOSE EXCUSED FROM HEARING THE SACRED OFFICE. 139. To private chapels; for nowadays, priests commonly perform the Divine Office there, by virtue of some approval which, by custom, is present. Clause VII. "Without, however, prejudice to any parochial rights." Because of this clause, marriages and similar matters cannot be announced in private chapels. Whether the sacraments of penance and the Eucharist can be administered there, see what is stated in n. 37, ad 4. Clause VIII. "On the Feast of the Resurrection, Pentecost, and the Nativity of Our Lord Jesus Christ, as well as on other more solemn days." It should be noted that, according to Gavanto (2), only the first day is included under the names of Easter and Pentecost. What other days are included in the words "other more solemn days" is stated repeatedly in n. 37, cited above. Clause IX. "You may celebrate it in your presence, and in the presence of your family, as well as your noble guests." It is also noted above (n. 37) that the words "in your presence and in the presence of your family" imply that it cannot be celebrated unless some of those to whom the indulgence

has been principally granted are present, as declared by Benedict XIV. Regarding the word "family," all relatives, at least up to the fourth degree, are included, provided they live in the same house and enjoy the privilege at the expense of the owner, as the Doctors commonly state (3). Clause X. "We decree that those servants who, during your time, attend the said Mass, and are not actually required to do so, are not to be considered entirely exempt from the obligation of hearing Mass on days of precept." Therefore, in order for servants to enjoy the privilege, it is required that 1. they not only live at the owner's expense, but also actually serve, as is stated in cap. "Sicut nobis," on the word "sign." in 6; and 2. It is not sufficient that they continuously serve the owner, but their actual need at the time of the Mass is required. Pignat (4) holds that useful servants can also be considered, in some way, necessary, at least, as P. Gatticus says, if they are necessary for the decorum that belongs to the owner; but Brixia denies both, stating that the aforementioned privilege must be strictly interpreted, as if derogating from the common law; he only admits, with Gatticus, one servant who is considered morally necessary for those things that may occur at the time of Mass. It is asked whether servants who live on the owner's salary, but reside outside of his house, enjoy the privilege. Some deny it; but it is more commonly held (5) that they do; and not improbably, provided they continuously serve in the house and, as stated, are actually necessary at the time of Mass.

POINT II. THOSE EXCUSED FROM HEARING THE SACRED OFFICE. 39. Those who are excused include the impotent, such as the sick, the excommunicated, those held in bonds, guards, etc. — 40. Servants, children, and wives who are compelled, etc. — 41. A serious inconvenience excuses. — 42. Necessity excuses. — 43. Whether scandal, etc.; whether for great profit, or in order to confess, one may omit the Sacred Office. 39. Any impotence, whether real or moral, which would cause serious harm or inconvenience, excuses from the precept of hearing the Sacred Office (1). Tamb. l. c. n. 25. — (2) Gav. p. r. tit. 10. 2 Sciendum. — (3) Pignat. tom. VI. cons. 98. n. 91. et seqt. Pasq. qu. 66g. Ronc. de Sacr. Mis. c. 5. qu. 3. v. Sexto, Croix l. 3. p. t. n. 627. P. a Brixia p. 8. contra Peliz. et Tambur. — (4) Pignat. loc. cit. nu. 107. — (5) Peliz. Manual. tract. 8. c. 2. sect. 2. q. 22. Mazzotta, Gattic. Castrop. Quarti, et alii spud La Croix l. 6. p. 2. n. 272. contra Bon Barb. Lez. etc. ap. La-Croix.

[*Latin ed. p. 152*]

140. TRACTATE VI. CONCERNING THE THIRD COMMANDMENT, whether spiritual or temporal, pertaining to one's own person or one's neighbor.

1. The infirm are excused, because, if they go out of their homes, a serious detriment, or pain, or the postponement of health is feared. In such cases, the infirm person may, with good reason, rely on the judgment of a physi-

cian, or a superior, or a prudent man, and even on their own judgment, if they are already able to judge prudently. And when a serious detriment is involved, even if doubt persists, the infirm person is excused with good reason; for in such a doubt, the law of preserving health prevails (1).

2. The excommunicated and those detained in prisons are excused, since they are not bound to seek absolution or freedom in order to attend Mass, as many Doctors hold. However, others say, and it seems to me to be the better opinion, that they should not be excused if they could easily obtain absolution or freedom without serious inconvenience; or if they themselves do not seek to obtain it, lest they render themselves bound by such a precept (2).

3. Those who are guarding camps, cities, flocks, houses, infants, or children, whom they cannot leave without danger and whom they cannot bring with them without disturbing the temple, are excused; likewise, those who reasonably fear that they will be taken to prison if they go to church, and those who are necessarily obligated to assist the sick, so that they must administer medicine and food to them at the proper time, and cannot abandon them without causing great distress (3).

40. Servants are excused if their services are necessary to prevent a serious detriment to their masters. Nevertheless, such servants should, if possible, take steps to attend Mass, even if it involves some slight inconvenience to themselves, for example, by sacrificing some sleep or leaving earlier. However, if their services are not necessary at the time of Mass, they are not excused unless they reasonably fear a serious reprimand or serious detriment, for example, that they will be dismissed, and that they could not easily or immediately find another master. The same applies to children by their parents, and to wives by their husbands, who are compelled to omit Mass or to work on a feast day; they are excused if a serious reprimand is feared (4).

41. Travelers and those on journeys are excused if they would suffer serious harm by attending Mass (5). A considerable distance from the church is also an excuse. In this matter, the circumstances of the person, the time, and the place must be considered; but, according to the generally accepted opinion of Suarez, Castr. Filiuc., Salmant., Trull., Croix, Mazzotta, and others, a distance of three Roman miles, or a walk of one hour and fifteen minutes, is generally considered an excuse, especially if it is raining or snowing, or if there is another excusing cause (6).

42. The custom, according to local usage, of women not leaving their homes for six weeks after childbirth, or for a month during a time of mourning for the death of a husband, or sister, or daughter, is also an excuse, as Suarez and Mazzotta state. However, those women who do leave their homes for other reasons are not excused from attending Mass because of these reasons. However, that custom (or, to speak more accurately, that

abuse) by which girls abstain from attending Mass in order not to go out in public, cannot be considered lawful.

43. Women who lack proper clothing, or servants, or companions are excused; but these are obligated, if possible, to attend Mass very early in the morning, or in a church where the congregation is not large. The same applies to a girl who is dishonestly pregnant. Some Doctors excuse a girl if only one Mass is to be celebrated, and if she must make announcements concerning her wedding; but this cannot be admitted unless (1) Lib. 3, n. 325. — (2) Ibid., see Excommunicatus. — (3) N. 326. — (4) N. 327. — (5) N. 318. — (6) N. 329.

[*Latin ed. p. 153*]

ON THE OBLIGATION OF CHILDREN. 141 In those places where such a custom existed, a girl would be filled with great shame; which, indeed, rarely happens (1). 43.—It is possible for a woman to be excused if she knows that she is being subjected to shameful desires. But we say that she is not obligated to abstain from the sacraments unless it is once or twice (2). Finally, a considerable loss of profit can probably excuse [her], as has been said in a similar case, n. 22. And likewise, merchants, carters, and millers can be excused if, in order to attend the sacraments, they would suffer a great loss or an extraordinary expense (3). Thus, also, one can be excused for omitting the sacraments in order to prevent some grave sin, or damage; or in order to confess, if otherwise he would remain longer in mortal sin. But it is not permissible to omit Mass in order to perform some meritorious work, even if it is of higher merit (4). As for whether a traveler is obligated to attend Mass on a feast day, in a place where it is obligatory, even if he only stays there for one day; see what is said in the treatise, 2, n. 41. By the way, it should be noted that Benedict XIV, in the brief "Cum sicut," dated December 22, 1748, permitted servile labor on feast days, except for Easter Sunday and Pentecost, and all other Sundays; also on the days of Circumcision, Epiphany, Ascension, Corpus Christi, and the Nativity of Christ; also on the days of the Purification, Annunciation, Assumption, Nativity, and Conception of the Blessed Virgin Mary. On the other hand, he granted indulgence to the faithful to be obligated only to attend Mass on other feast days.

TREATISE VII. ON THE FOURTH COMMANDMENT OF THE DECALOGUE. CHAPTER I. ON THE OBLIGATION OF CHILDREN. 1. On love for parents. — 2. On reverence. — 3. On obedience. 1. — I. Children are obligated to show love, reverence, and obedience to their parents (and likewise, subjects to their superiors). Therefore, they sin gravely in several ways against love, namely: 1. if they detest them, or wish them grave harm (in which they sin doubly, against piety and against justice); 2. if they unjustly prevent them from making a will; 3. if they cause them serious trouble without just cause; 4. if they do not help them in a serious tempo-

ral or spiritual need, especially if they neglect to ensure that they receive the sacraments at the point of death (5). 2. — II. They sin gravely against reverence, 1. if they strike them, even lightly, or show that they want to strike them; 2. if their gestures are contemptuous and mockingly deride them; 3. if they utter curses or reproaches against them in the presence of others, calling them fools, drunkards, beasts, or thieves.

(1) Book 3, n. 330.

(2) n. 353.

(3) n. 352.

(4) Ibid. See "It is not excused."

(5) n. 353.

[*Latin ed. p. 154*]

TRACTATE VII. ON THE FOURTH PRECEPTS OF THE DECALOGUE. Those who use curses, perform witchcraft, or commit heinous acts. However, it should not be absolutely concluded that the elderly, the ignorant, or the foolish are guilty of mortal sin, unless they are deeply contrite (1). It has been said that if a son were to insult or curse his parents without malice or in jest, I would not condemn him for mortal sin (2).

3. – III. They sin gravely against obedience if: 1. They force unworthy wives upon their children, bringing dishonor to the family (note that this is said concerning betrothals, volume 2, treatise 18, number 10); 2. They are furious about matters concerning the family's property; therefore, note that this is said in reference to theft, treatise 10, number 32. 3. They do not obey their parents in serious and just matters, and in those things that they are commanded to do (by an explicit and serious precept, as Roncaglia, Holzman, and Sporer say), such as not playing harmful games, not going out at night, not associating with women or bad companions, etc. (3). It is said concerning just matters that a son is not obligated to obey his parents regarding the choice of a profession, as St. Thomas teaches (4): "Neither are servants bound to their masters, nor are sons bound to obey their parents in contracting marriage or in maintaining virginity." Therefore, parents, as we shall say in the following chapter, sin gravely if they prevent their children from choosing a profession, or if they force them to take on a profession against their will.

CHAPTER II. WHAT PARENTS AND BROTHERS ARE OBLIGATED TO DO. 4. Concerning food, inheritances, and dowries, the decision of the Four Doctors. — 5. Concerning education; if a father prevents a vocation, or forces someone into a particular state of life, or compels them to enter a monastery. — 6. What brothers are obligated to do. 4. – PARENTS are primarily obligated to provide for the preservation and education of their children. They sin regarding preservation if: 1. They squander their assets, rendering themselves unable to provide the necessary sustenance for their

children (even if they are illegitimate), or if they neglect to provide for them in any way they can; 2. They unjustly deprive them of their inheritance upon death, or in life, they refuse to establish a patrimony for children who wish to be promoted to the priesthood, or they deny a dowry to daughters, even if they have married against their will, after they have reached the age of 25. If they marry before that age, there are different opinions; but the opinion of Sanchez, Molin, Salm, Trullench, etc., seems more probable to me, who say that the father is at least obligated to provide sustenance, even if they have married unworthily (5). Regarding the father, Sanchez says (with the Glossa in cap. Admonere 33, q. 4) and Surdo says that he is obligated not only to provide sustenance for the son, but also for his wife, even if he has taken her without a dowry and against his father's will (6). Furthermore, Azor and Mcrenda (7), with Baldo and Jasone, say that the father must provide for the son, even if the son has spent a portion of what was given to him on vices. It should be noted the decision of the Four Doctors of the Neapolitan School, that a father cannot expel his children from the house, even if he wishes to provide them with sustenance elsewhere; and conversely, that the children cannot claim anything from their father if they wish to live outside the home, unless they do so for a virtuous reason (8). When a father can, or cannot, disinherit his children, see what we say in treatise 10, number 238, when we speak of contracts.

(1) Book 3, number 334. — (2) Book 5, absolutely. — (3) Number 355. — (4) 2nd question, 104th article, 5th paragraph. — (5) Book 3, number 336, 5th line. Father. — (6) Sanchez, 1st part, 4th book, treatise 26, number 21. Bossuet, on the effects of marriage, page 2, number 95, etc. — (7) Azor, page 2, 1st book, 2nd chapter, 4th question, 12th paragraph. Mcrenda, against, book 4, chapter 34, page 6. — (8) Book 3, number 338.

[*Latin ed. p. 155*]

REGARDING WHAT PARENTS AND BROTHERS ARE OBLIGATED TO DO. 143 5. – Concerning education, 1. Parents sin if they neglect to instruct their children in matters of faith and salvation, either by themselves or through others; 2. if they cause them scandal, by uttering blasphemies or obscene words, etc., and especially if they lie with them in the bed, or if they allow boys and girls to sleep together; 3. if they do not correct their excesses, and especially if they have stolen something; 4. if they do not ensure that their children receive the sacraments, and observe the feasts, fasts, etc.; 5. if they allow them to associate with scandalous people, and especially if they do not prevent the betrothed of their daughters from entering the house; 6. if they prevent their children from entering a state of life that is fitting for them: e.g., marriage that is proper for them (1); it should be noted what will be said in Volume 2, treatise 18, number 17, when the matter of betrothals is discussed. They sin even more if they turn their children away from the religious life without a just cause (2); see what is said in treatise 13, number

25. 7. They sin if they force their children to marry certain people; unless there is some very serious reason, such as if a marriage would greatly contribute to settling a great enmity, or to relieve parents who are burdened by a grave necessity; thus say Bellarmine, Loyola, Sanchez, Petrocor, Tolet, and others, in common with St. Thomas; but this is always understood with the condition that the son would take a wife (3). They also sin if they compel their children to enter the ecclesiastical state, or the religious life, or their daughters to enter monasteries. And here it should be noted that, according to the Tridentine Council, Session 25, chapter 18, anyone who compels a girl to confess in a monastery, to receive the habit, and even to enter there, incurs excommunication, even if it is solely for the purpose of education, as we maintain with Suarez, Navarre, Bona, etc., against Sanchez; this understanding of the council's words should be understood (4). On the other hand, we say that parents do not incur censure if they simply suggest to their daughters that they enter a monastery, as Barbosa says with Rodriguez and others, against P. de Alexander concerning nuns, who does not correctly assume that this is some kind of coercion through reverential fear, for it is truly different to enter out of fear instilled by the father, and to enter out of the will of the father, even if he adds prayers, provided that these are not too insistent, so that a probable fear is aroused that the father will be angry with him (5). But since the council has mentioned cases expressly stated in law, it is probable that Suarez, Bona, and Filliuc allow that girls can be compelled to enter a monastery as a punishment for some offense, or to prevent them from falling into some impurity, as is deduced from chapter "Significavit" and chapter "Gaudemus" concerning conjugal matters (6). Indeed, I would not condemn this as sinful, since, if a girl is kept at home, she is in danger of giving or receiving scandal; then the purpose of the council's law seems not only to cease negatively, but also contrarily, according to what is said in treatise 2, number 69. (Observe what will be said more fully about this excommunication in Volume 2, treatise 19, number 29.) Furthermore, it should be noted with the same Alexander that those who, without a just cause, prevent girls from making a profession, or from receiving the habit in any religious order, are also excommunicated; and even if they prevent them from entering a monastery, as is more likely held by Suarez, Bona, and Filliuc against Sanchez and Castrop (7). 6. – Regarding brothers, these too are obligated (if they are able) to provide sustenance (1) Book 6, number 849, concerning the end, see "Convenient." – (2) Book 3, number 335, see "Furthermore." and book 4, number 77. – (3) Book 6, number 850. – (4) Book 7, number 212, see "Regarding." – (5) Ibid., Doubts 2. – (6) Ibid., see "Regarding" at the end. – (7) Ibid., Doubts 2, see "Moreover."

[*Latin ed. p. 156*]

TRACTATE VII. CONCERNING THE FOURTH PRECEPT OF THE

DECALOGUE: To minister to brothers and sisters, and not only in extreme necessity, but also in grave need, as commonly taught by Azor, Barbosa, and Salmant, along with Trullench, Fagnan, Menoch, etc. However, these authors state that brothers and sisters by blood are obligated only to provide sustenance (1).

CHAPTER III. OF THE OBLIGATIONS OF MASTERS, SERVANTS, AND SPOUSES.

7. The obligation of masters, especially concerning wages.

8. The obligation of servants. If they allow theft. If they leave against the agreement.

9. The prescription of wages.

10 and 11. Compensation.

12. The obligation of husbands.

13. The obligation of wives, especially to follow her husband.

7. I. REGARDING MASTERS, they sin:

1. If they are the cause that servants do not fulfill the precept of the sacraments of the holy days and annual feasts.

2. If they deny or delay wages.

3. If they do not correct them when they blaspheme or give scandal.

4. If they eject them before the agreed time without just cause, and then they are obligated to pay the entire salary promised to them, according to "Qui operas" (law), 38, and "Locati" (law), 16. However, this is understood after the judgment; for if the servant had suffered no damage from the expulsion, then the master is not obligated to pay the entire salary, but rather half, and perhaps a little more (2). If, however, the servant is infirm for six months, the master is obligated to nothing, according to the common opinion of Lugon, Moulins-le-Carbonnel, Laym, Croix, etc. (whatever Antoine may say), provided that there is no contrary custom there. And he is not even obligated to pay for the expenses of the infirmity, as Lugo probably holds against others; provided that the servant was not in grave necessity (3).

8. II. REGARDING SERVANTS, we say that they sin:

1. If they are absent from their service, or if they do not obey their master as they should.

2. If they allow their masters to suffer damage when they could prevent it, and the damage comes from outsiders, they are obligated to make restitution; but if it happened by those within the household, according to the common and more probable opinion of Lessius, Lugon, Azor, Moulins-le-Carbonnel, Holzman, and Salm (against Ponthieu and others), they would sin against charity, since they could conveniently prevent the damage; but

not against justice, provided that the care of those goods was not especially entrusted to them (4).

3. A servant sins if he leaves at the appointed time without cause. But in that case, the master cannot deny him the entire salary that is due to him in proportion to the service rendered; it will be sufficient if he pays him half, or a little less, as Azor, Filliuc, Sylv, Salm, Trullench, Fagund, etc., say (5). If, however, he leaves due to infirmity, or another just cause, he may demand the entire salary corresponding to the service rendered, and then he is not obligated to make up for the work from which he then ceased (6).

9. It should be noted here that:

1. After two years, or even six months (according to the decree of the Holy Council of Naples), the servant can no longer bring an action for wages (according to the bull of Saint Pius V, cited by Salmant, on the fourth precept, no. 134). But this is understood in judgment, because in conscience, one can certainly claim it, or even demand it, provided that the three-year prescription has not been legitimately made for the master with title and good faith (7, according to what will be said in treatise 10, no. 11, when we speak of prescription).

(1) Book 3, no. 540. Note.

(2) No. 542.

(3) Ibid., no. 3, Herus, and no. 864.

(4) Ibid., pages 543 and 544.

(5) No. 345.

(6) No. 346.

(7) No. 347.

[*Latin ed. p. 157*]

REGARDING WHAT MASTERS ARE OBLIGATED TO DO, etc. 145 10. — It should be noted 2. that if a slave had performed service without a specified wage, and the master refused to provide compensation, the slave may justly compensate himself, at least to the lowest price customarily paid by the master to others, or if the master were already intending to pay that amount. However, this is different from the case of those young people for whom nobles are petitioned to include them among their family or to hire them, to whom only food is customarily provided (1). 11. — It should be noted 3. that a slave cannot compensate himself for his labor if he believes that his labor is worth more than what he receives, since proposition 37 from Innocent XI stated: "Domestic servants can secretly take from their master to compensate for their labor, which they deem to be worth more than the wage they receive." Nevertheless, Viva, Salm. Less. and Molina (what La Croix says) correctly state that this does not apply when the slave was compelled by necessity to agree to a notably lower wage than what was just; in such a case, just as the master is obligated to pay a just

wage, so too can the slave compensate himself (but not beyond the lowest amount), provided (I add) that the master did not find someone else willing to perform the same labor for that lower, just price without violating justice. Furthermore, Sotus, Navar, La Croix, Corella, Filguerra, etc., state that the slave cannot demand a higher wage when he voluntarily increases his workload, but he can when he increases it at the expressed or tacit request of the master. However, Viva, Croix, and Cardenas state that the slave cannot make compensation on his own initiative without the advice of experts or a highly learned theologian. In contrast, Salm. argues that if the compensation is evidently just, and there is no danger of deception, because the matter is clear in itself, then the slave may compensate himself to the lowest price. They argue that the aforementioned proposition was condemned because it spoke too generally (2). 12. — III. Regarding spouses, a husband sins 1. if he mistreats his wife with beatings or insults without just cause; however, he may justly reprimand her when there is a just cause (especially a cause of honor), provided that the reprimand is appropriate to the status and condition of the wife, as Busemb., Elbel, and Gob. state, otherwise he would sin in a double manner. 2. If he hinders his wife from fulfilling her obligations. If he only hinders her from those things that are matters of counsel, namely, the frequent reception of the sacraments, Bonac., Sayr., Busemb., Filliuc., etc., state that if he does so without cause, he would only sin venially, not grievously, unless it is clear to him that she would receive greater spiritual benefit from them (3). 3. If he denies or neglects to provide her with sustenance, it is understood to be unjust; however, he may justly deny it if the woman departs from him without cause, or if she has committed adultery, as Sanch. and La Croix state, along with Castrop. (4). However, regarding the dowry, the husband cannot add it to his own possessions because of adultery before a judicial sentence; however, as Croix states with Castrop., contrary to Sanch., he may oppose the wife's claim to the dowry with the exception of adultery (5). 13. — A wife sins 1. if she disobeys her husband in what is just (especially in not fulfilling her conjugal duty); and if she assumes domestic governance when the husband is capable of it, or if she is extravagant with her possessions. 2. If she spends more on common affairs than other wives of her station usually do. Note that this will be discussed in section 10 (1) Lib. 3. n. 348. — (2) N. 522. et seqq. — (3) N. 356. — (4) Sanch. de matrim. l. 10. disp. 8. n. 25. et La-Croix lib. 3. p. 1. n. 714. — (5) Ibid. 10.

[*Latin ed. p. 158*]

TRACTATE VII. ON THE FOURTH PRECEPT OF THE DECALOGUE, NO. 33, CONCERNING THEFT. 3. If, upon entering into a second marriage, she does not preserve the goods of the children of the former marriage which she received from the first husband, goods to which she has only the right to use, as is stated in the Authentic Commentary on Testaments

and the Authentic Commentary on Donations, chapter concerning second marriages, she is bound to do so. 4. If she unjustly refuses to follow her husband who is changing his residence, even without a sufficient reason, and even if he is traveling to a distant place, she is obliged to remain with him for a longer period; for if he were to return shortly, neither the woman is obliged to go, nor is the husband obliged to take her, just as he is not obliged to incur great expenses to take her with him. Thus say Sanchez, Tolet, Filliu, Salm, and others in common (1). Conversely, the woman is not obliged to follow the husband, 1. if such an agreement was made during the betrothal, and no new and serious reason has arisen, as say Castrop, Navar, Sanchez, Salm, etc. (2). 2. If the husband wished to take her to a wicked end. 3. If she would be exposed to grave danger of death or another grave harm on the journey. 4. If the husband wished to travel abroad, as say Navar and others in common (3). But is the wife obliged to follow the husband who is exiled? Some deny it, but Sanchez, Bossuet, and others more plausibly affirm it (4).

CHAPTER IV. OF WHAT PASTORS OF SOULS ARE OBLIGED TO DO. POINT I. OF THE OBLIGATIONS OF PARISH PRIESTS. 14. I. Concerning Residence. Decrees of the Council. — 15. If he resides there uselessly. — 16. Good faith does not excuse from restitution. — 17. Concerning the license that must be requested from the Bishops. — 18. Where residence must be maintained by Popes, Cardinals, Bishops, and Parish Priests. — 19. Charity, necessity, obedience, and utility are excuses. — 20. Whether a verbal license is sufficient, or whether a written, or a presumed one. — 21. If a reason for absence is added, but a license is lacking. — 22. Whether all fruits must be restored. — 23. And to whom. — 24 to 27. II. Concerning the administration of the sacraments. — 28. Whether during a plague, etc. — 29. III. Concerning the celebration of Mass. — 30 to 32. IV. Concerning correction. — 33. He must prevent those from assuming the clerical habit who are not worthy, and he must deny the sacraments to the unworthy. — 34. He must inquire, etc., and especially concerning the records of Communion, marriage impediments. — 35 and 36. V. Concerning preaching and Christian instruction. — 37 to 44. Those of greater importance, which must be announced. — Other obligations of the Parish Priest, namely, 1. Example, 2. Assisting the dying, 3. Almsgiving, 4. — 45 and 46. To examine midwives, etc., concerning Baptism. Concerning the ringing of the bell three hours after midday, etc. 45. y. Note. 14. — PARISH PRIESTS are burdened with many duties, but five especially: I. They are obliged to reside. II. To administer the sacraments. III. To celebrate Mass for the people. IV. To correct. V. To preach and instruct. Concerning all of these individually. And 1. Concerning residence, it must first be noted that it was declared and established by the Council of Trent, Session 23, on reform, chapter 1, concerning this matter. Therefore, the Council 1. clearly states (as is understood by the common opinion of Doctors) that all bishops, and

especially all other pastors, are by divine law obliged to reside in the place where the care is to be exercised, because pastors are said by divine law to be obliged to pasture the sheep not only through the sacraments and the preaching of the divine word, but also through example, to which it is not possible to satisfy except through residence, by which they show themselves to be present. 2. It establishes concerning bishops (which also applies to parish priests) that they should not depart from their diocese, unless one of the following reasons requires it, namely, Christian charity, or an urgent necessity, or due obedience, or evident utility to the Church, or to the commonwealth, ap- (2) Book 6, no. 977. — (2) Book 3, no. 353. — (3) Book 6, no. 977. y. Regularly. — (4) Book 3, no. 353.

[*Latin ed. p. 159*]

ON WHAT PASTORS OF SOULS ARE OBLIGATED. 147 It must, however, be approved by the Pope, or by the metropolitan, etc. (However, Benedict XVI reserves this approval solely for the Pope in the bull *Grave*), taking care, as far as possible, that their absence does not cause any detriment to the flock. Otherwise, bishops are granted three months during which they may be absent, but for a valid reason, and without causing detriment to the flock, for which they would be held accountable. However, they are encouraged to remain in their cathedrals during the seasons of Advent, Lent, Christmas, Easter, and Pentecost. Regarding parish priests, it is stated that they cannot abandon their parishes for more than two months, unless there is a serious reason for staying away; but even then, they must obtain written permission from the bishop. Indeed, even during those two months, the parish priest cannot leave unless the bishop approves the reason and the suitability of the vicar who will always be required to replace the parish priest when he is absent. 3. It is declared and established that all non-resident pastors, apart from the guilt of mortal sin, do not produce the fruits due to them from their care, in proportion to their absence, and are obligated, even without further declaration, to restore these fruits, whether to the church fabric or to the poor of the locality, by whatever means agreed upon. 15. — Assuming this, we say I. that the same fault, and the obligation of restitution, are incurred by absent pastors, and by those who reside in the churches without providing useful service, both because of natural law: for the fruits are given to pastors in consideration of their useful presence, not merely their personal presence; and because the Council expressly obliges them to maintain such a useful presence, stating that they must fulfill the duties assigned to them; and finally, this is clearly declared by the blessed Pope Benedict XIV in the aforementioned bull *Grave*, stating that residence is not true, unless it is formal, that is, when the required duties are fulfilled. Barbosa, Salm, with Vasquez and Garzia, also note that the declaration of the Sacred Congregation does not consider a parish priest to be residing if he does not personally perform his

principal duties for two months, namely preaching and the administration of the sacraments (1). 16. — We say II. that a parish priest (or bishop) who is not residing, even if he believes in good faith that he has a just reason, is nevertheless obligated to make restitution (whatever Viva and Garzia may say); and for the same reason given above, since the pastor is obligated to reside, not only by positive law, but also by natural law, due to the contract entered into between the pastor and the Church, for which the fruits are given to him; therefore, he cannot retain these fruits, even if (without bad faith) he does not fully perform the duties of his office. All the more so, because Benedict XIV, in the bull *Ad universæ*, in the year 1746, expressly declared that bishops who are absent from their churches for more than three months without a legitimate reason, and without express permission from the Pope, incur penalties, among which, as has been said, the principal penalty is that they do not receive their fruits (2). 17. — We say III. that although the Council requires only the bishop's permission for a parish priest's absence of more than two months, nevertheless, a parish priest cannot abandon his parish, even during those two months, unless the bishop approves of the reason, and unless (which is more important) he approves of a suitable substitute (3). However, if ever there should arise some necessity for departure that does not allow for delay, then it is permissible for the parish priest to leave, provided it is for a short time, and that he provides a suitable vicar in his place. Thus, the Doctors generally agree with the decree of the Sacred Congregation. But then, the parish priest must at least inform (1) *Lib. 4, n. 127, Dubit. 3.* — (2) *Ibid., Dubit. 3.* — (3) *N. 225, Dubit. 2.*

[*Latin ed. p. 160*]

TRACTATE VII. CONCERNING THE FOURTH PRECEPT OF THE DECALOGUE. The bishop, in the event of his absence, should at least obtain permission from another, for the time during which he is obliged to be absent, provided that he intends to return shortly. Furthermore, such an absence admits of a minor transgression, as commonly stated by Castropal., Anacl., Roncag., Barb., Holz., etc. Some assert that this minor transgression consists of an absence of one week; many others, including Tournel, Cabassut, Sanchez, Roncaglia, etc., maintain that it extends to two weeks (it is always understood that another will be substituted). However, in the Roman Council under Benedict XIII (title 25, chapter 6), it was forbidden for pastors to be absent from their care for more than two days without the permission of the bishop, or of the vicar; nevertheless, it is a common rumor, even among learned men, that such a decree was not accepted in our kingdom. La-Croix excuses a pastor who has been absent for two months without permission, but with a valid reason and without causing serious harm to the flock, stating that such an absence is not considered a grave offense by the Council, and he cites Barb., Navar.,

Bonac., and others. However, I do not know whether I can agree with this opinion, since the Council (as stated) establishes that the bishop, in such an absence, must not only approve the reason, but also the suitability of the vicar, due to the danger that may arise if an unsuitable substitute could cause great harm to the flock by presiding over it for two months (1).

18. — Question 1: Where should pastors reside? The Pope and Cardinals reside in Rome. As for the bishop, as Fagn., Salm., etc., say, he should reside in the cathedral. However, we, along with Cabass., Bonac., Holzman, maintain that he can reside in any place within the diocese, and this cannot be doubted today after the Bull of Benedict XIV, which begins "Ubi primum," in the year 1740, in which it is declared: "You must maintain personal residence in your church or diocese"; thereby confirming what it had previously expressed in these words: "They are obliged to maintain personal residence in their church or diocese." The pastor, however, should remain at the house of his church, if present; if not, in another house, within the boundaries of the parish, at least morally; so that he can conveniently provide service to the church, and so that his parishioners can easily access him to receive the sacraments. Therefore, Bonac. and Salm. state that it is not judged improper for a pastor to reside three miles, or even two miles, away from the parish, as La-Croix reasonably says. Moreover, the same author, along with four others, adds that it is not sufficient for a pastor to reside within the boundaries of the parish if it is not easy for the flock to come to him (2).

19. — Question 2: In what sense are the four reasons described above by the Council of Trent to be understood? And I. For the sake of Christian charity, it is understood when a pastor must go elsewhere to settle disputes, especially between powerful individuals; or to free another church from heresy, or from other enormous crimes. II. For an urgent necessity, it is understood if a particular danger of death threatens the pastor; and especially for pastors, the Sacred Congregation has decreed that a pastor may be absent for six months for such a reason, leaving a vicar there with the permission of the bishop, which may be extended for another period of time, but after a year, he must be required to relinquish the parish. Speaking of the aforementioned danger, it is not to be understood as a common danger, such as a plague (as the Doctors commonly believe, and the Sacred Congregation has declared), enemy invasions, and the like; but it is understood as a particular danger with respect to the pastor himself (or the bishop), for example, because he is harassed by enemies, or because the air is harmful to his health (1).

(1) Book 4, number 125.

Furthermore, — (2) Number 124.

[*Latin ed. p. 161*]

TO WHAT EXTENT ARE PASTORS OF SOULS OBLIGATED? 149. Thus,

the infirmity must not be perpetual, and the absence must not cause a grave detriment to the flock; otherwise, either the pastor must remain in the place of his care, or he must relinquish the care. It should be noted that concerning this matter, especially with regard to bishops, it was decreed by Benedict XIV in the bull *Ad universæ*, issued in the year 1746 (1). III. By obedience due, it is understood that if a parish priest or a bishop were to be absent in order to obey the mandates of the Pope or of the ordinary for the good of the Church, or of the republic, or for some other grave reason, as Tournely says, provided that the absence is brief; for if it is prolonged, the necessity of the common good is required. And here, note that a bishop cannot appoint a parish priest as his vicar or visitor, etc., and retain him with himself, as the Sacred Congregation declared. However, Castrop, Barbatus, Azor, and Vasquez limit this, stating that if no other person can be found who can provide a substitute (which rarely happens), this is permissible. IV. For evident utility to the Church or the republic, it is understood when it happens that a pastor is absent in order to attend a synod, or to defend himself, or his relatives, or the church in a grave matter before the royal tribunal, as Soto, Bonacini, Vasquez, Roncaglia, and Salm say, with the decision of the Roman Rotunda. However, this is always understood with permission, and only if another person is present who can assist. And Benedict XIV says in the aforementioned bull that if it is a matter of a dispute of one's own family, no other permission should be granted to bishops except during the conciliar months (2). 20. — It is questioned: 3. Whether the permission that a parish priest should obtain is valid if it is given only orally? Lessius and others affirm, saying that the written document is required only for the forum, not for validity. Sanchin and Castrop deny this, saying that the Council requires written permission for form's sake; otherwise, it would have no force. But since this is not certain, Viva and Croix consider Lessius' opinion to be probable. Moreover, Coninch and Reginald admit even tacit permission from the bishop with present consent. Mazzola adds that even presumed permission for the future, or interpretative permission, is sufficient; but La Croix says that this is not admitted by anyone. And the Sacred Congregation declared that this permission must be expressed (3). 21. — It is questioned: 4. Whether a parish priest (or a bishop) is obligated to restore the fruits, if he remains away without permission, but for a certainly just cause? Viva says (4) that the parish priest then sins against positive law, but not against natural law, from which he infers that he is only obligated to restore the fruits after a judgment. But I do not agree with this opinion, since the Council, with regard to parish priests for the time of their absence (as stated above), not only requires a just cause, but also a substitute, which is sufficient. And with regard to bishops, Benedict XIV declared (as stated in n. 16) that those who abandon their dioceses for more than three months without a legitimate cause and without the express permission of the Pope are included

under the name of transgressors. And it should be noted that, according to the Council and the bull of Benedict, those who are transgressors are not only condemned to restore the fruits, but also are not to acquire them, since it is said there: "They shall not make their own fruits." Therefore, according to positive law, it seems to me that they are obligated to restore the fruits which they received that were not their own; for since they are guilty of abandoning the church without permission, they cannot acquire the fruits (5). At least (I say this tentatively), it is doubtful whether a pastor can make those aforementioned fruits his own in such a case; in a case of doubt, no one can justly acquire ownership of things, as is permitted in *Tractatus* 10, n. 8, when we are dealing with ownership (6). Furthermore, I do not know (1) *Lib.* 4, n. 125, v. Thus. — (2) N. 125. — (3) N. 125, v. Here. — (4) *Opusc.* 3, q. 3, a. 5, 3. — (5) *Lib.* 4, n. 127. — (6) Cited in n. 127.

[*Latin ed. p. 162*]

TRACTATE VII. CONCERNING THE SEVENTH PRECEPT OF THE DECALOGUE.

150. It is condemned for a parish priest to abandon his parish because of a clearly justifiable reason, and to leave behind a suitable curate who has already been approved by the bishop, and who is actually serving in the parish.

22. It is questioned whether a parish priest, by being negligent in his residence, is obligated to make restitution for all the fruits of the parish corresponding to the time of his absence? Navar asserts this, based on the fact that the council indefinitely obligates restitution. However, Barb., Bonac., and Viva, along with Vasq., and the common opinion, assert that he is only obligated for that portion which corresponds to the burdens of residence, since the fruits are not given solely to support these burdens, but also for other things, namely, canonical hours, Mass, etc. Therefore, since the council has not expressly stated otherwise, it is presumed that it intends to adhere to the natural law, which dictates that no one should be deprived of the entire compensation for services rendered, having already fulfilled part of the obligations.

23. It is questioned to whom the fruits from non-resident pastors should be restored? Other beneficiaries, if they neglect to recite canonical hours, can restore them to the poor of any place (or to the fabric of the church, or to the house of the benefice); but non-resident pastors, as prescribed by the Council of Trent, Session 23, chapter 1, must apply them entirely to the fabric of the church, or to the poor of the place. It is not sufficient to apply them to the souls in Purgatory of that region, by offering Masses or other prayers; for the souls of the deceased can no longer be said to belong to that region. However, Father Viva, along with Lessio, states that it may be

permissible for the parish priest to apply them to himself, if he is truly poor; provided that he does not do so fraudulently, namely, if he does not intend to apply the restitution to himself; for fraud should never be countenanced. Furthermore, the parish priest may retain the fruits if the poor donate them to him, but only after they have come into their hands; for before that, the poor cannot give them away, since they do not acquire ownership of those fruits until after they have been delivered to them.

24. II. Parish priests, or other curates, are obligated to administer the sacraments themselves. With regard to the sacrament of penance, the parish priest is obligated to administer it not only at the time of the precept, and in cases of grave necessity, but also as often as (as commonly Lugo, Azor., Busemb., Salm., Holzm., etc., against Sylvest., and a few others) penitents request to confess, even out of devotion; unless (as Adversa rightly observes) they wish to be heard untimely, and too frequently; or unless there are other confessors, and he is legitimately hindered. Therefore, La Croix, Gobat, Conc., and Salm. assert that the parish priest sins if he is reluctant and difficult to hear confessions, especially if he has been summoned by the sick, to whom, as Saint Charles Borromeo prescribed, he should attend promptly and at any hour. However, if the curate once and again refused to hear someone's confession without necessity, Suar., La Croix, and Arriaga (against Bon.) assert, it is not gravely sinful, provided that there is no urgent necessity, such as a Jubilee, or a solemn feast, as Adversa limits it. If, however, the parish priest had an approved curate, he is not obligated to devote himself so strictly to hearing confessions; but he must see to it that the curate is truly suitable, both in knowledge and in morals; otherwise, he will be accountable to God for all the damages that result from the curate's ignorance and bad behavior. It is always advisable (incidentally, here is a note) (1) Book 4, n. 127, Doubts 4. — (2) n. 128. — (3) Book 6, n. 58 and n. 63, — (4) n. 63.

[*Latin ed. p. 163*]

REGARDING THE DUTIES OF PASTORS OF SOULS. 151 (tamous). Thus, the parish priest sometimes calls upon external confessors for the sake of truly contrite souls, especially if the Lenten preacher does not usually administer confessions. 25. Regarding Holy Communion, the Doctors commonly teach that the parish priest is bound to administer it whenever it is reasonably and appropriately requested, since the pastor must not only see to it that his flock fulfill the commandments, but also that they are provided with those helps that can contribute to their progress. Hence, it was decreed by the Holy See in 167sing, approved by Innocent XI, that pastors (that is, bishops or parish priests), although they may, for just reasons, deny Communion to a particular subject, cannot prescribe specific days for Communion for everyone in general, but must defer in this matter to the judgment of the confessors (1). Regarding Viaticum,

when it may and should be given, observe what is said in Volume 3, in Appendix 2, section 4, number 2, concerning the assistance of the dying. 26. Parish priests are also bound to ensure that children receive Holy Communion when they are capable of it, that is, (speaking regularly) when they have reached the age of ten or twelve, as Lugo, Castrop, Salm, Dicastil, etc., say, or at least up to the age of fourteen, as Suar, Laym, Vigandt, Antoine, and La-Croix say. But St. Charles Borromeo, in his ninth diocesan synod, instructed his parish priests to admit all boys of the age of twelve to Holy Communion; and yet, the parish priests afterwards find it difficult to give Communion to boys who are twelve years old; but why? Because they want to avoid the burden of instructing them. Alas! how many parish priests neglect this obligation of theirs, which is certainly not insignificant! 27. Regarding Extreme Unction, parish priests are strictly bound to administer it to those who request it. And let them note what the Roman Catechism teaches (part 2, on Extreme Unction, number 18): "Those who neglect to anoint the sick at that time gravely sin," when, having lost all hope of salvation, they begin to lose their life and their senses. 28. Are parish priests bound to remain during times of plague, and to administer the sacraments at the risk of their lives? Regarding residence, the Doctors commonly teach that they are bound to remain, as St. Thomas says (2): "Where the healthy require the presence of the pastor, the pastor should not abandon the flock because of some imminent danger." However, St. Thomas makes an exception for the case in which the pastor can adequately provide for others. But he does not speak of times of plague. Furthermore, we have in Fagnanus (3) that Gregory XIII declared that parish priests are absolutely bound to remain during times of plague; and in another decree (as Fagnanus reports there), he declared that even bishops are bound to remain, but with the power (as he said) to remain in a safer place within the diocese, and to attend to the needs of that place. Regarding the administration of the sacraments, in approving the decree of the Holy See of the Council of 1576, he declared: "A parish priest is bound to administer to his parishioners those sacraments that are necessary for salvation during times of plague, namely, Baptism and Penance." Since he said "those that are necessary," he declared that parish priests are free from the obligation of administering Holy Communion and Extreme Unction to those suffering from the plague; indeed, he added that these very sacraments of Baptism and Penance may be administered by others who are suitable, while the parish priest reserves himself for hearing the confessions of the healthy, whom otherwise they would avoid.

(1) Book 6, numbers 253 and 254.

(2) 2nd part, question 185, article 5.

(3) In I part, 3, Decretal, chapter Clericus de clerio, non resid., numbers

38 and following, and 45 and following.

[*Latin ed. p. 164*]

TRACTATE VII. ON THE FOURTH PRECEPT OF THE DECALOGUE. They are to attend to those lying ill (1). However, Suarez, Holzmüller, Roncaglia, Castiglioni, Sporer, and others commonly state that if a person suffering from a disease (and lacking the use of reason) has not confessed for a long time, and the parish priest reasonably believes that he is in mortal sin, then he is obligated to administer the Sacrament of Extreme Unction to him, even at the risk of his life (2).

III. Parish priests, or other secular or regular clergy, and even more so bishops, are obligated to pray and to celebrate Mass, not only for the benefit of the people, but also to apply the fruits of the Mass for them on each Sunday and feast day, as most recently decreed by Benedict XIV in the bull *Cum semper*, in the year 1744, declaring that this is valid even if the priest does not have a suitable income (although, according to the words of the bull, he may lack suitable revenues), even though in some places there is an ancient custom to the contrary. And if a parish is vacant, he granted the bishop the power to assign a caretaker a suitable portion of the fruits, so that he too may celebrate Mass on feast days for the people. He also granted bishops the power to dispense with a parish priest who otherwise could not live, so that he may apply the Mass on feast days for those who give him alms, with the obligation to make up for the weekdays for the people.

Here, a doubt arises, about which I find no mention by any author. If a parish priest is ill, and is unable to celebrate Mass himself for the people, is he obligated to have it celebrated by another? I consulted several learned men on this matter; some denied it, saying that this obligation is included in the general duty that all pastors have to pray for their flocks; and since the obligation to pray is purely personal, just as a primacy priest who is unable to pray is not obligated to pray through another, so too a parish priest who is unable to celebrate Mass is not obligated to celebrate Mass through another. But I, along with others, believe the opposite is to be held, because the parish priest is not only obligated to celebrate Mass for the people, but also to apply the Mass to the people, as declared by Benedict XIV in the year 1744, in his bull *Cum semper* (see in his Bullarium, vol. 4). That is, according to the words of St. Paul (Hebrews 5:1): "For every high priest taken from among men is constituted for men in things pertaining to God, that he may offer both gifts and sacrifices for sins." And finally, the same is confirmed in verse 2, saying: "And therefore he ought, as for the people, so also for himself, to offer for sins." The obligation of the pastor to pray for the people is indeed personal, but the obligation to apply the fruits of the Mass to the people is both personal (because if he can celebrate Mass himself, he cannot celebrate Mass through another) and also real, since it is one of the obligations of the pastoral office, as stated in the Council of Trent, Session

23, chapter 14, where it was commanded that priests who have charge of souls should celebrate Mass frequently enough to fulfill their duty. This burden of offering Masses for the people is from divine precept, as the same Council expressed, cited, Session 23, chapter 1, where it is said: "Since it has been commanded by divine precept to all to whom the care of souls has been entrusted, to offer sacrifices for them, and to offer the words of divine preaching, etc." That divine precept is found in John 21:17: "He said to him the third time." Just as the pastor is obligated to feed his sheep by preaching, administering the sacraments, and correction, so too he is obligated to feed them by applying to them the fruit of the sacrifice: therefore, just as a pastor who is unable to preach or administer the sacraments is obligated to preach and administer the sacraments through another; so too, a parish priest who is unable to apply the Mass to the people himself is obligated to have it applied by another.

(1) Book 6, paragraph 235.

(2) Paragraph 729.

[*Latin ed. p. 165*]

THE OBLIGATIONS OF PASTORS OF SOULS. 153 They are bound to reap the fruit of sacrifice, which is a more useful nourishment, by which they can help the people. However, pastors and all to whom the care of souls is entrusted are bound on Sundays and feast days to celebrate Mass and to apply it for the benefit of the people; all the more so are bishops, as the principal pastors of souls. However, they are not bound to do this daily; nor does the passage in chapter Quoniam ult. de privil. contradict this; for there it is said, with regard to bishops, that daily celebration of Mass, or attendance at it, is only a matter of decency, not of obligation; these are the words of the text: "Because their bishops—" who are often absent from their churches and dioceses—"cannot always conveniently access the churches" to celebrate or attend Mass in them, "nor is it fitting for them to pass through any day without a reasonable cause:" "by the present constitution, we grant them permission to have an altar" and to celebrate, or to have celebrated, "anywhere, without transgression of the prohibition, so that they may celebrate or attend divine services." It should be noted here, by the way, that Benedict XIV, in the bulla mentioned above, Cum semper, further declared that the conventual Mass, which is sung daily by the clergy of churches, cannot be applied for the benefit of the people, but is entirely to be applied for the benefit of the benefactors of that church, whatever the custom may be (1). 30. — IV. Pastors, and especially bishops, are bound even to the point of risking their lives to correct those subject to them who are in mortal sin, or who are in imminent danger of falling into it, and not only in their extreme necessity, but also in grave danger, always and whenever there is a reasonable hope of amendment, as commonly taught by Suarez, Bonaventure, Valentia, Concinius, Salm, etc., with

St. Thomas, 2. 2. q. 185. a. 5 (2). We add, with Cajetan, Sanchez, Castrop, Diana, Roncaglia, Holzmüller, and others, that pastors are bound to do this not only out of charity, but also out of justice; for they receive a stipend from the community, in order that they may, as far as their power allows, prevent the vices of any of their flock; therefore, when they have seriously failed in this duty of justice, they remain also obligated to make restitution (3). 31. — And if some powerful person is found to be causing a scandal, which the pastor cannot address, he must inform the bishop, so that he may take measures to remedy the situation. And if, perhaps, the bishop were to be negligent in this matter, the pastor must appeal to the secular authorities, if the subject was a lay person, or attempt other appropriate remedies, and he must not neglect this out of any human consideration or fear. In short, this is what the Gospel proclaims, that the good shepherd gives his life for his sheep. When notable dissolutions of morals are found in a region, the pastor is bound to ensure that a mission is held there (the pastor who does not care for this sows suspicion about his own morals; good pastors do not neglect to invite a mission every fourth or fifth year). Finally, when nothing remains to be attempted to correct the evil, and although, speaking generally, there is no precise obligation to make a correction, when there is no hope of progress, the pastor must not therefore omit it; and he may even repeat it to obstinate sinners, at least in the case where there is no serious danger of suffering any great harm; at least that correction will serve to prevent the pastor from being ill-spoken of by other subjects, when they see the scandal continuing (1). See l. 6. n. 325 and 326; and l. 3. n. 359. — (2) N. 360. v. Parochi. — (3) Ibid. v. Sed dubit. 1.

[*Latin ed. p. 166*]

154 TRACTATE VII. ON THE FOURTH PRECEPTS OF THE DECALOGUE and the danger of a negligent pastor; for, besides the fact that correction serves to prevent others from being led into sin by example, when they see no one present to correct or reprove them. 32.—And the pastor is not only obligated to remove sins and scandals that have already begun, but also to prevent those that can easily arise later. Above all, he must prevent betrothed couples from visiting each other's homes; for, although they may not initially visit with impure intentions, experience teaches that in such circumstances, almost all betrothed couples subsequently fall into sin, and they also drag their parents with them, who permit them to associate with the betrothed. Therefore, the pastor must, by all means, strive to prevent this spiritual ruin of two families, which arises from this cause, and which will persist until the marriage is contracted, especially if the betrothal has already been initiated. Therefore, it is incumbent upon every pastor to avoid receiving testimony from betrothed couples, except shortly before the marriage is to be celebrated, since we observe that, once betrothal has begun, the entire period of time between

the betrothal and the marriage is a time of sin.

33.—Furthermore, the pastor must, before the bishop, prevent the clerical habit from being bestowed upon adolescents or young boys who are not of good morals, or who, at least, do not exhibit a religious character; for, if they remain silent and allow these boys to wear the clerical habit, those boys will later grow up in idleness, and, blushing with shame, they will strive, by fair means and foul, to be ordained, although burdened with vices, and they will be a great detriment to religion, a danger which the pastor could easily have prevented at the beginning; later, there will be no remedy. And therefore, the pastor must at least instruct those clerics who are already ordained, and guide them along the paths of a devout life, so that they may become good ecclesiastics. What, then, will those pastors render to God, who present to the bishop those who are to be ordained, claiming that they frequently receive the sacraments and are of good morals, when they know that these individuals are not diligent in receiving the sacraments, nor are they a good example to others, but rather a scandal! What could be more deplorable than to see pastors boldly attest that clerics who have confessed and received communion only twice or three times a year have, in fact, confessed and communed every week, or twice a month! Concerning such pastors who give such testimony, it must be said that they have defected from the faith; for, with regard to all the sins that these individuals commit, who are promoted without the calling of God, and with regard to all those of whose sins they are the cause, the pastor makes God his judge, since the bishop entrusts the entire faith to the pastors in this matter of such great importance, upon which the salvation of the people depends. But diligent bishops do not rely solely on the testimonies of pastors in this matter, since the salvation of the people hangs in the balance; nor will the pastor be excused before God if he gives testimony based on the testimony of others, unless he is absolutely certain of what he testifies concerning the frequency of the sacraments and the good morals of the individual.

34.—Pastors are not only obligated to correct and to prevent sins and scandals that they see, but also to diligently inquire whether there is anyone in their parish who is engaged in some sin and is not fulfilling his duties; for the salvation of each sheep has been entrusted to the pastor. Thus, the Doctors Cajetan, Laym, Soto, Salm, and others, along with St. Thomas (1), teach in common, who says: "He who has a special care for another, is obligated to seek him out in order to correct him from sin" (2). Pre- (1) 2. 2. q. 35. a. 2. ad 4. — (2) L. 3. n. 360. Dubit. II.

[*Latin ed. p. 167*]

TO WHAT EXTENT ARE PASTORS OF SOULS OBLIGATED? 155. Pastors must diligently ensure that all their subjects fulfill the Paschal precept, without showing favor to anyone; therefore, they must take care not to en-

trust the communion certificates to any cleric. After the Paschal season has passed, they must carefully inquire about those who may not have fulfilled the precept (1), and they must admonish them; if they do not reform, the pastor must report them to the bishop, so that the bishop may impose a censure upon them, whether by excommunication or by interdict. Some pastors do indeed do this with prominent individuals, but they connive and become drowsy when dealing with others of greater standing. How many of these are found in missions who have neglected to fulfill the precept for many years, without the pastor even uttering a word of admonition to them! Furthermore, when a marriage is to be contracted, the pastor must inquire whether any impediment exists; if he reasonably believes that such an impediment exists, he is obligated to deny his assistance to them and to suspend the marriage, until at least the bishop is informed, so that the bishop himself may decide what must be done, as commonly stated by Sanch., La-Croix, Ledesma, Vega, and others, with Lugo adding that if the ordinary knows of any hidden impediment, he must prohibit the marriage, even if he knows this only through private knowledge and cannot prove it (2). 35. V. Pastors are obligated to give instructions and sermons. Regarding instruction, they must instruct and teach the people the mysteries of the faith that must be known and believed, and that are necessary for salvation, namely: 1. the four principal mysteries, namely, that there is one God, and that this God is omnipotent, most wise, the creator and lord of all, merciful and loving towards all, and especially that He is a just remunerator and that Jesus Christ died; 2. the sacraments necessary for salvation, which are baptism, the Eucharist, and penance; the others should at least be received, along with the necessary dispositions for receiving them; 3. the articles of the Creed, and among these, especially the perpetual virginity of the most holy Mary; the session of Jesus Christ at the right hand of the Father, namely, that He is in heaven in equal glory with the Father; the resurrection of the dead at the final judgment by Jesus Christ; the unity of the Roman Church, in which salvation is found; and finally, the eternity of paradise and hell. All of these things each faithful person is obligated to know under a grave penalty; 4. the precepts of the Decalogue and of the Church; 5. the Our Father, and the Hail, Mary, and the acts of faith, hope, love, and contrition. Therefore, just as it is a grave sin for someone to neglect to know these things (and indeed not only regarding the words, but also regarding the meaning), so too it is a grave sin for a pastor, as commonly stated by the Doctors, if he, or if through others who are suitable (when the pastor himself is legitimately hindered, as stated by the Council of Trent, Session 5, chapter 2), does not take care to teach at least in substance to the children and adults of his flock who are ignorant of these things. Therefore, when he notices that parents or masters do not take care to ensure that their children or servants attend Christian instruction, he is obligated to consult with the bishop about a suitable remedy, who, as stated in the Council of

Trent, Session 24, chapter 4, on reform, can even compel the parents to do so through ecclesiastical censures. Good pastors note the children, so that they may know who is failing to fulfill their parts in this. Indeed, La-Croix states, in book 2, number 174, and in book 3, page 1, number 767, that if there are others present who are uneducated and who cannot attend church because they are guarding the house or the flocks, and they are found to be in grave spiritual necessity, the pastor should go to them to instruct them, even at his own inconvenience, as stated by the aforementioned author. At the very least, we say that if there were a large number of such uneducated people, he should take care to instruct them at least temporarily. (1) Barb. de offic. par. c. 2. n. 7. et Segueri paroch. instruct. cap. 25 — (2) Lib. 6. n. 54.

[*Latin ed. p. 168*]

156 TRACTATE VII. ON THE FOURTH COMMANDMENT OF THE DECALOGUE, concerning the observance of the Paschal precept, or when preparing to receive the sacrament of Confirmation, or to enter into marriage. It is also fitting that the pastor investigate whether teachers and mistresses are capable of properly instructing boys and girls in Christian doctrine, and in the principles that lead to living in the fear of God. 36.— Regarding preaching, the pastor is obligated to preach to all on Sundays, as prescribed by the Council of Trent, Session 5, chapter 2, on reform (see treatise 6, note 5). But it must be noted that the Council of Trent not only imposed upon pastors the duty of feeding the flock with the divine word, but also of feeding them according to their capacity, with easy-to-understand language, so that they may understand what is being preached. For it is true that faith, as it is spread, is also preserved by preaching: "Faith comes from hearing;" therefore, those sermons which are not in conformity with the manner held by Jesus Christ, and followed by the Apostles, are of little or no benefit to the people. For the Apostles preached "not in persuasive words of human wisdom, but in demonstration of the Spirit and power," as St. Paul confesses. Therefore, the Most Venerable Fathers of Avila rightly called those preachers who preach out of vanity, in order to gain praise, "traitors to Christ"; and Father Gaspard Santius said that these are those who persecute the Church, since by preaching in this way, they are the cause of many souls perishing, whereas those same souls could be saved by sermons that conform to the standard of the Apostles. Empty words, convoluted phrases, and meaningless descriptions, said St. Francis de Sales, are the plague of preaching; whose sole purpose should be to move the audience towards good, and not to feed the intellect in a useless manner; as we learn from experience, such ornate preaching does not change lives, because God does not cooperate with vanity. And this should be said of all preachers who preach with vanity, but especially of pastors, to whom the Council of Trent, in the aforementioned passage, prescribes the following: "Archpriests, vicars, and all those who have charge of souls,

whether by themselves or through others who are properly qualified, if they are legitimately hindered, should at least on Sundays and solemn feasts, feed the people entrusted to them with salutary words, according to their capacity." Note those words, "according to their capacity." Therefore, those pastors certainly transgress the decree of the Council who preach with an elevated style beyond the understanding of the people. 37.—It is also helpful to note certain things that the pastor should frequently impress upon the people in his sermons. And 1. that for amendment, it is not enough to simply avoid sin, but it is also necessary to avoid the occasion of sin. And speaking of betrothed couples who are in the homes of the bride, he should say that both they, and their parents who permit this, cannot be absolved unless they remove the aforementioned occasion. 2. He should urge people not to go to taverns, by showing them the countless sins that are often committed there, besides drunkenness, namely blasphemies, quarrels, scandals, obscenities, domestic discord, and the theft of food from the family, etc. 3. He should frequently denounce the vice (which is general, especially in villages) of speaking dishonestly in the fields and in workshops, especially if it is spoken in the presence of boys and girls, and others of different sexes. How many young people perish because of these wicked words! And he should urge parents, masters, and workshop owners to watch over their children or servants, and to correct and punish those who speak in this way, especially during the harvest season. 4. He should insist on demonstrating the enormity of sacrilege, by those who receive the sacraments of Confession and Holy Communion.

[*Latin ed. p. 169*]

WHAT PASTORS OF SOULS ARE OBLIGED TO DO. 157. If someone omits a sin in confession out of shame, and to inspire horror, he should frequently recount some terrible example of those who, confessing sacrileges, afterwards perished with unhappy consequences, and he can therefore have at hand the book by Father Vega, entitled "Cases of Confession," etc., 38. — He should suggest 5. the necessity of sorrow and the purpose of confession, even if it is only of venial sins, urging that no one should approach absolution unless they are truly sorrowful about at least some venial sin of which they accuse themselves, or unless they present a clear account of their past life, of which they are truly repentant, so that the confession may be valid. But since the uneducated people do not easily understand how this sorrow should be, he should often explain that everyone who is repentant, in order to make a valid confession (whether the sorrow is of contrition or attrition), must be sorry for their sin in such a way that they hate it and detest all evil above all things. 39. — He should encourage 6. those who are prone to anger, for blaspheming and cursing, to say: "May my sin be evil, may the demon be turned away," or: "My Lady, help me; My Lady, grant me patience." 7. He should instill horror of superstitions or

empty observances, which are often used to cure illnesses or to find thieves, etc. 8. He should teach parents to correct their children, especially when they are young, when they blaspheme or steal, etc. Furthermore, he should be vigilant in observing and finding out with whom they associate, and he should forbid them to associate with bad companions or to be familiar with people of the opposite sex. Moreover, he should not allow their children to sleep in the same bed, whether they are very young, lest they be suffocated, or whether they are older (for example, if they are over 6 years old), lest they experience scandal, and even less should he allow boys and girls to sleep in the same bed. 40. — He should frequently urge 9. his listeners to resist internal temptations, especially those of impurity, by invoking the Holy Names of Jesus and Mary. This is the greatest remedy against temptations. 10. He should constantly urge that when anyone has fallen into a mortal sin, they should immediately make an act of contrition, so that they may recover the grace they have lost, with the purpose of confessing as soon as possible, and he should refute this deception of the devil, namely that God is as merciful to two sins as to one; because it may happen that God waits after the first, and after the second, He abandons them without His help. 41. — 11. He should teach the actions that everyone should perform when they rise from bed, namely, the act of giving thanks, offering, and supplication, by reciting the prayer "Ave" three times in honor of the Holy Virgin Mary, and by resolving to avoid all sin, and especially that sin into which they are most often inclined, praying to the Divine Mother that she may deliver them from it; and he should urge all mothers to have this practiced every morning by their children. In sermons, he should remind parents to take care that their children frequently receive the sacraments; for if they do not receive them, they easily fall away from the grace of God, and parents should consider this a great loss. He should also say that they sin if, without just cause, they turn their children away from marriage or from religious life, or if they force them into marriage against their will; just as the children sin who enter into marriage against the just wishes of their parents: see what we say about betrothals, vol. 2, treatise 18, no. 10. 42. — 12. Since it is true, as we have said above, that the parish priest is not only...

[*Latin ed. p. 170*]

158 TRACTATE VII. ON THE FOURTH PRECEPT OF THE DECALOGUE. He is bound to prevent evil, but also to promote good, and should encourage the people to visit the Blessed Sacrament and the Blessed Virgin. He himself can make this visit in common with the people, as is the custom in many regions. And he should say that those who cannot come to the church should at least do so from their homes. He should especially urge the people to attend gatherings, and to receive Holy Communion, with proper preparation, and with subsequent acts of thanksgiving through faith, love, offering, and petition, teaching them the

practical way in which this should be done. 43.—13. He should often see to it that the people cultivate devotion to the Blessed Virgin with singular zeal, pointing out how great is her power and mercy towards her devoted. Therefore, he should encourage them to recite the Rosary together as a family every day, to fast on Saturdays, and to celebrate novenas for the seven feasts, which he should announce to the people from the altar whenever a novena occurs. Therefore, he should, on Saturdays, give a short talk, relating some example of the Blessed Virgin, and once a year, celebrate a more solemn novena with a sermon, and exposition of the Blessed Sacrament, and for this purpose, among others, he can use the book which I have published, entitled: "Glories of Mary," where he will find a wealth of material and examples. Happy is that parish priest who keeps his flock fervent in devotion to Mary; for, with the Virgin's help, they will live righteously, and will experience the Advocate as powerful in the end of life. 44.—Above all, he should encourage the practice of petition, namely, that they often commend themselves to God, especially asking for perseverance in love for Jesus and Mary: he should often explain that divine grace, and especially the gift of perseverance, are not obtained unless they are asked for: "Ask, and you shall receive." And he should often proclaim that great promise of Jesus Christ, that whatever we ask the Father in His name, the Father will give us to: "And in that day you shall not ask me any thing. Amen, amen, I say to you: if you ask the Father any thing in my name, he will give it you." John 16:23. He should also strongly encourage the practice of mental prayer, and he should see to it that it is done in the church with the people every day, or at least on every feast day; he should also teach them the way in which it can be done at home. The practical method for practicing mental prayer is set forth at the end of Volume 3, in Appendix I, on the Direction of Spiritual Activities. But here, I must allow myself to express the pain of my heart. Alas, how few are those pastors and confessors who take upon themselves the care of encouraging their penitents in this exercise of mental prayer, or meditation, without which it is very difficult for the soul to persevere in the friendship of God, and impossible to embark on the path to perfection! If some attention were given to this matter, how many souls would be seen to be kindled in the love of God! But this is not done, because people do not want to take on anything that might be inconvenient; they do not want to feel the sting of their own accusing conscience, in urging others to do good that they themselves neglect. In short, this is not done because Jesus Christ is not loved enough. Oh, if pastors and confessors loved Jesus Christ very much, ah! how many would they inspire to love Him, and how many would they deliver from hell! Therefore, the Lord should be prayed to, so that, if He wishes to be loved by souls, He may be loved by priests. 45.—Besides the obligations described, which are the main ones, there are other obligations for the parish priest, which are also not minor. 1. He is bound to be a

good example to others. For the pastor is that "lamp burning and shining," which is in

[*Latin ed. p. 171*]

WHAT PASTORS OF SOULS ARE OBLIGED TO DO. 159. The Gospel describes them as being ardent in zeal for holiness inwardly, and shining with a good example outwardly. Otherwise, He Himself declares and exhorts others, as far as they are able, to walk in the paths of virtue; but unless they themselves lead by example, their subjects will not even believe what they say; for men believe more with their eyes than with their ears, as the Council of Urgell states (tract. 3, on the office of clerics). 2. He must diligently assist the dying, and especially hardened sinners, who are in great need of special assistance. It is true that the parish priest can entrust this assistance to other priests, but he should not trust to any priest; for in this matter of assisting the dying, scandals of no small damage can occur. 3. He is obliged to help the poor from the revenues of the parish, after deducting his own and that of his family (if they are truly poor). This should be noted, as will be said in tract. 13, chap. 2, point 2, on benefices. 4. He is obliged to carefully examine midwives, to see if they know that they ought to know how to administer baptism to infants in cases of necessity, as is stated in the Roman Ritual on the baptism of children; for such a case can often occur to them, and therefore they are strictly obliged to know how to administer baptism, as St. Antoninus and St. Reginald say. In Aversa, etc. (1). Furthermore, the parish priest must observe what the Roman Ritual prescribes to parish priests regarding baptism, namely: 1. that they note in a separate book the names of those baptized, their parents, and godparents; 2. that they remind godparents of their kinship and of the obligation they have undertaken; 3. that they remind mothers and nurses not to lie down with the children. Nevertheless, Barbosa, Anaclasius, Tournely, and others commonly note that this obligation ceases if all danger has passed, for example, if the bed was spacious, and the child could not otherwise rest because of the cold, and the woman usually kept her position while sleeping. (2). Finally, it should be noted that Benedict XIV, in the Constitution 9, issued on December 13, 1740, beginning with "Ad Passionis," etc., Bullarium, vol. 1, commands, in virtue of obedience, all parish priests, or rectors, etc., that on each weekday, at the third hour after midday, they cause the bell to be rung in all cathedrals and parish churches, so that the faithful may gain an indulgence of one hundred years by reciting five Paternoster and Ave Maria with bowed heads, and by praying according to the intention of the Pope. 46. Finally, the good morals and salvation of the people depend on good parish priests. If a good parish priest is present in a region, devotion, the frequent celebration of the sacraments, mental prayer, and a good example will be seen to flourish there; but if the parish priest is wicked, the entire region will abound in vices and scandals. (1) 2.

2. q. 143, a. 6. (2) Suppl. q. 36, a. r., ad 3.

[*Latin ed. p. 172*]

TRACTATE VII. ON THE FOUR PRECEPTS OF THE DECALOGUE. POINT II. ON THE DUTIES OF BISHOPS. 47. I. On Ordination. —48 to 51. Those to be ordained must be tested in spirit. —52. And in doctrine. —53. Regarding the seminary established for this purpose. —54. II. On the selection of parish priests. —55. What the bishop must impress upon them. This discourse concerns the gathering of young women. —56. On the election of confessors. This discourse concerns academies. —57. On particular ecclesiastical congregations. —58. He must oversee the celebration of the Mass. —59 and 60. III. On visitation. —61. IV. On the care of nuns. —62. V. On residence. —63. VI. On correction. —64. VII. On almsgiving. —65. and 66. On the Mass, on allowing access to those who come to him, and on the example he must give, especially concerning gentleness, poverty, prayer, etc. 47. —THE BISHOP IS OBLIGATED BY MANY OTHER DUTIES TOWARDS PARISH PRIESTS. Above all, I. concerning ordinations, he is bound to choose for the ministry at the altar only those who are worthy, and to exclude the unworthy; St. Francis de Sales was distressed when he considered this obligation; therefore, the saint admitted no one to the orders unless his life was blameless, paying no regard to recommendations, nobility, or learning; for learning that is associated with a bad life is more harmful, because it brings authority to vice. This is why he promoted only a few, as good bishops do today: for there are few, to tell the truth, who are initiated into the priesthood from a true vocation, and to give glory to God; and therefore, there are few priests who become good and useful to souls. The saint himself said that many priests are not necessary for the Church, but good ones. 48. The bishop must examine those who aspire to the orders in both spirit and doctrine. Regarding spirit and morals, that bishop is not very safe who relies on the testimonies of parish priests. These are often given for human reasons. Nor can the bishop simply acquiesce in the negative goodness of the one to be ordained, as St. Thomas says, namely, that he knows nothing of any evil about him; but he must know his positive goodness, obtaining such information as will provide sufficient evidence that he has truly been endowed with the spirit of the Church. St. Paul says (1 Timothy 3:6) that a priest (who is also included under the name of bishop by the Holy Fathers, as by St. Ambrose, St. John Chrysostom, St. Thomas, and others) must not be a novice, that is, as the Angelic Doctor explains, not only in age, but also in perfection. Therefore, the Council of Trent, in session 23, chapter 12, states that only those whose lives have been proven by old age should be admitted to the sacred orders, signifying that they must be endowed with a good disposition, and must be old in virtue, according to Wisdom 4:9: "The life of old age is a spotless life." Therefore, zealous bishops do not

readily confirm petitions, unless they have first secretly ascertained the moral integrity of those concerned from several trustworthy persons who know the subject. Let this be carefully noted, for this is a very effective, indeed necessary, means for the bishop to ensure his own conscience in the ordinations he performs. From such secret knowledge, the bishop can be certain not only whether a cleric is given to games, insolence, or bad habits, and thus a scandal to others, but also whether he positively practices a spiritual life, frequenting churches, prayer, and the sacraments; whether he lives in solitude, or at least keeps company with good people; whether he dedicates himself to study; whether he conducts himself with modesty and speech, and the like. And if, perhaps, he has knowledge of a positive scandal concerning someone, then he must not be satisfied with an ordinary presentation.

[*Latin ed. p. 173*]

ON THE DUTIES OF BISHOPS. 161b. He must demand a certain standard, but he must also consider a long period of time; for suspicion arises when all his actions seem to be motivated by a desire to obtain the orders. 49. According to the ancient discipline of the Church, those who had committed a mortal sin were completely excluded from receiving orders, as testified by St. Jerome, St. Isidore, and others. Later, in some centuries, those who had been defamed for some serious offense were permanently excluded from the orders. We admit that this strictness is not always practiced in our time; nevertheless, it is certain (as we have seen) that no one can be admitted to the orders who has not first been proven virtuous, and especially in the long-standing continence that those who are ordained to the sacred office must practice. We have in c. Nullus, dist. 25, from St. Gregory: "No one should approach the altar unless his chastity has been approved before he undertakes the ministry," book 1, epistle 42. And the Holy Pontiff requires that this approval be obtained over many years, saying: "So that those who are ordained may not perish, it is necessary to first consider whether their life has been chaste for many years." This same proof is required by the Council of Trent, session 23, chapter 13, on reform, which prescribes that the sacred orders should not be conferred except upon those who have been proven in the lower orders, that is, those whose good lives have been experienced. 50. Therefore, in summary, it cannot be doubted that a bishop gravely sins by admitting someone unworthy to the sacred orders; and someone is unworthy if he has not given sufficient proof of his positive goodness. St. Thomas gives a reason, saying (1) that greater sanctity is required for the sacred order than for the religious state, "because through the sacred order one is appointed to the most important ministries." And elsewhere (2): "Just as those who receive the order are established above the people by the order itself, so too they should be superior in merit of sanctity." Therefore, according to St. Thomas, just as

clerics, through the sacred order which they receive, are raised to a higher rank above the Christian people, so too they should be found superior in merit of sanctity. Therefore, he asserts that they have the duty of acquiring the grace that makes them worthy to be numbered among the ministers of Jesus Christ: "And therefore, the grace is required, which is sufficient for this, that they may be worthily numbered among the flock of Christ." Then, the Saint concludes that it is not enough for a bishop who ordains that he knows nothing bad about the person, but he must also be certain of the worthiness of the one being ordained: "But it is also required (these are the words of the Angelic Doctor) that, according to the measure of the order to be conferred, there should be certainty about the quality of those being promoted." And for this matter, the author cites the authority of St. Dionysius, who says that no one should be admitted to the ministry of the divine things (such as the priesthood), unless he has, through a long habit, recognized himself as conformed to God: "In all things divine, it is not permissible to become a leader unless one has become, in every respect, most godlike and most similar to God." 51. Furthermore, just as it would be sinful for one to strive for the sacred orders if he were not truly virtuous, that is, if he had not already acquired a habit of good living, at least because of the danger he would expose himself to of not being able to bear the burden that he undertakes, and especially the celibacy, without the calling of God, which (1) 2. 2. q. 184. a. 6. — (2) Supp. q. 36. a. 1. ad 3.

[*Latin ed. p. 174*]

TRACTATE VII. ON THE FOURTH PRECEPT OF THE DECALOGUE. It is certainly not to be presumed that one possesses the necessary qualities; therefore, a bishop would sin even more gravely by ordaining such a person, if his own improvement had not been preceded by a long period of proven virtue. St. Thomas (1) says: "Sacred orders require sanctity," hence, the weight of the orders must be imposed upon those who have already been cleansed by sanctity. The Doctor brings forth the analogy of a building, wishing to say that just as newly erected walls cannot support a heavy weight; so too, those who have recently changed their ways, and who have not yet been purged of the moisture of vices, should not be invested with the sacred order, which carries with it the obligation of perpetual chastity and a life of exemplary conduct, befitting a minister of the altar. Therefore, a bishop who confers the sacred order upon an unworthy person sins in two ways: he sins because he fails in his duty, and he sins because he cooperates in all the sins that the unworthy person commits, and he will be the cause of others also sinning. St. Paul (1 Timothy 5:22) indicates the same thing when he said: "Impose not hands lightly upon any man, neither be partaker of other men's sins. Keep thyself chaste." Upon this text, St. Leo later said: "What is it to be a partaker of other men's sins, if not to make the one who ordains such that he is, one who has not deserved to be ordained?"

52. Thus far concerning the spiritual aspect; let us now turn to the doctrine that is required in one who is to be initiated into the sacred orders. Ignorance harms not only oneself, but also others; and what is worse, ignorance in priests is a vice for which no remedy is found, as St. Francis de Sales said, either because they persistently remain incapable, or because, having received the priesthood, they will find it difficult to be compelled to study. Therefore, a bishop must take the greatest care to see whether the one who seeks to be promoted is well-educated, and whether he is eager for study; for he who is not a lover of study will never be fit for the Church, and will necessarily be corrupt; for (as is commonly said), idleness is the father of vices. Therefore, the prelate should not be satisfied with the examination that is usually given concerning the requirements for orders, and concerning other customary matters that those who are to be ordained learn in some little booklet, but after they have been ordained, they remain ignorant, as they were before. The Most Reverend Fabricius de Capua, Archbishop of Salerno, in his ordinations, and especially in the ordinations of priests, had his candidates examined on the entire moral theology. I also know another prelate (a vigilant bishop) who also required an examination on moral theology from the clerics, assigning to each order the treatises that they should know; and so, those who were to be ordained as priests were so thoroughly versed in the entire moral theology that each one could be found fit to hear confessions. Oh, that all bishops would follow these paths! One would not hear so many complaints, as are often heard, that no one is found to whom the office of confessor can be entrusted! But someone will say that the Council of Trent does not require so much knowledge from those who are to be ordained. But I reply that the Council does not, by the contrary, forbid that a bishop require this from those who are to be ordained by him (as the Fathers say), when he sees that such a necessity exists in his diocese. Furthermore, the Council only states that if such knowledge is lacking, no one should be promoted to the orders, but it does not command that one who possesses such knowledge should not be admitted to the order. But even speaking according to the Council of Trent, session 23, chapter 14, it says that those who are to be promoted to the priesthood "must be carefully examined to ensure that they are fit to teach the people... and to administer the sacraments." Pope Innocent XIII, in the Apostolic Ministry bull issued for Spain, and Pope Benedict XIII for the entire world, gave another benign interpretation (as Lambertini testifies) (4) 2. 2. g. 189. a. 1. ad 3.

[*Latin ed. p. 175*]

ON THE DUTIES OF BISHOPS. 163. Afterwards, Benedict XIV, in his instructions, no. 2, paragraphs 16 and 36, could only state that those to be ordained should at least be examined in moral theology. 53. Therefore, it is incumbent upon the bishop to ensure that the seminary is established

with the best possible direction, for from this (by establishing that no one should be ordained who has not spent at least three or four years there), priests, confessors, and other clergy will be selected; and in this way, he will be able to cultivate his diocese. I said that the seminary should be established with the best possible direction; otherwise, the seminary would be a greater source of harm to the young men and to the diocese. Those who enter the seminary (no matter how diligently they are chosen) will not all be angels: many do not possess the right spirit; but they must acquire it there. Therefore, if the seminary is poorly directed, it will happen that even those who enter as if they were angels will, after a short time, become demons, and will contaminate their entire region with the example of their lives. Therefore, if the bishop, due to a lack of resources or some other deficiency, cannot provide for his seminary with good teachers, he is absolutely obligated to close it, unless he wishes to give an account to God for so many crimes and scandals. Therefore, the seminary must flourish with the best discipline, both in spiritual matters and in studies. With regard to spiritual matters, 1. It must be established in the rules that meditation should never be neglected, that they should attend Mass daily, that there should be spiritual readings, visits to the Sacrament, examination of conscience, and silence except during times of recreation; and all of this must be observed daily. Also, every week they should confess and receive Communion, or at least twice a month, by inviting good and numerous confessors, and also other confessors more frequently during the year. Also, there should be one day of spiritual solitude each month, in which some father endowed with a good spirit will give a sermon, and there should be spiritual exercises carried out each year; it should also be established that seminarians should not go home during holidays; for then (especially during the harvest season), these young men neglect all spiritual exercises, and lose everything of good that they have acquired during that month or two months spent away from the seminary, and return to the seminary burdened with vices and sins. 2. The bishop must provide a good director, who is full of zeal and experienced, who is astute in observing everything and every action, and vigilant in going through the classes and investigating any shortcomings, often questioning the prefects, and even a more faithful seminarian who is present in each class, so that he may report any shortcomings he notices. 3. He must provide prefects of good character, who are never absent from their classes, and who do not allow the seminarians to have any particular familiarity with each other; and they must be strong in correcting, and faithful in reporting to the rector each week those who have been delinquent. 4. It is advisable that the bishop should frequently visit the seminary, and once or twice a year conduct a thorough examination, asking each seminarian whether there is anything amiss. 5. Above all, the bishop must be vigilant about the boys who are admitted to the seminary, taking care that no one enters who has not previously

been a good example, by inquiring about their character. It is better to have a few good ones than many imperfect ones, who, by the shame of their lives, will also contaminate the good. Then, strict rigor must be used with the incorrigible, and with anyone who has given a positive scandal, e.g., impurity, disturbance, theft, etc. Such seminarians should scarcely be tolerated even the first time, after a long and exemplary period.

[*Latin ed. p. 176*]

164 TRACTATE VII. ON THE FOURTH PRECEPT OF THE DECALOGUE. It is safer to expel such a person immediately from the seminary, for such a sheep, infected with vice, is capable of corrupting the entire seminary. To show charity in this matter is not true charity, but tyranny and injustice, since the bishop is obligated by justice to avoid common harm. As for the sciences, it is of the utmost importance that the bishop diligently ensure that young men are instructed in the Latin language, otherwise they will make little progress in other sciences, and those who do not understand Latin will find study unrewarding. He must also ensure that they learn philosophy (and especially logic, but a better kind), and scholastic and dogmatic theology. But above all, in dioceses that are not very large, it is necessary that the seminarians devote all their diligence to moral theology, so that they may become skilled in hearing confessions, and the bishop may be able to use their services when necessary. Otherwise, when they leave the seminary, they will no longer study, and they will remain useless to the Church. It would also be beneficial if the seminarians were to practice, now one in teaching Christian doctrine to children each week, and now another in some small task, in conversations, etc. In this way, they and others will become fond of apostolic exercises, so that when they leave the seminary, they will be prepared for such work. Therefore, it is very useful to instruct seminarians about such exercises. Anyone who wishes to learn more about the good governance of a seminary can consult my small book, which I have recently published on this subject.

54. — II. The bishop is obligated to choose good pastors and good confessors. As for pastors, it has already been shown that those who are more worthy should be preferred. Even in simple benefices, the more probable opinion, following St. Thomas and others (1), requires that those who are more worthy be preferred, because this is what serves the common good of the Church. But with regard to parish assignments, it is certain from the Council of Trent that the bishop is obligated to choose the more worthy, considering the qualities of the candidates, namely, their prudence, age, merits, but above all, their knowledge and probity of life. With regard to knowledge, the bishop can rely on the judgment of examiners; but his primary diligence should be to learn about the probity of their lives, by inquiring about it from various sources. The opinion of St. Francis de Sales,

which states that sufficiently learned doctors should be preferred to those who are inferior in spirit in the care of souls, should not be taken as absolute. And the Holy See, in its decree on the election of pastors (cf. Piase::cki, p. 328, n. 19), decreed: "A less learned person (provided he is suitable) should be preferred to a more learned person whose life is unknown." It should be taken for certain that a virtuous pastor is more useful to the people for one month than a more learned pastor, but less virtuous, for the entire year.

55. — The bishop is also obligated to inquire from others whether the pastors are diligent in teaching Christian doctrine to children, whether they preach, and whether they preach according to the prescriptions of Trent. The prelate should often remind the pastors to break the bread of the divine word to the young, and also to encourage them in their sermons to address matters that are useful, e.g., how to resist temptations, what to say when faced with adversity, or when someone is wronged, and so on. Furthermore, the bishops should inquire how diligently the pastors and confessors attend to hearing confessions. In some places, pastors and confessors also assist in the choir; but what happens? It happens that when the congregation is larger in the church, they are drawn to the choir, and the people delay confessing for several months: the bishops must provide a remedy for this. Furthermore, (1) Lib. 4, n. 93.

[*Latin ed. p. 177*]

ON THE DUTIES OF BISHOPS. 165. They should inquire whether the parish priests are diligent in ensuring that children, about ten years of age, who are capable, receive the Sacrament of Holy Communion, as mentioned above. Also, whether they are diligent in collecting the communion slips for Easter, in order to see if all have fulfilled the precept, whether the practice of mental prayer is maintained, and whether visits to the Blessed Sacrament and the Blessed Virgin are made in the parish church, as is customary in many places. It is also very important that the bishop should strive to introduce this practice where it does not exist, to restore it where it has been discontinued, and to confirm and encourage it where it is found. They should also commend the assistance given to the dying and to religious congregations. In many of our places, we have introduced congregations of girls. These are arranged as follows: All girls under the age of sixteen are gathered in a church each Sunday evening. There, a priest of proven integrity, specially appointed for this purpose, gives a brief and simple talk, or instruction, on mental prayer, on the proper reception of the Sacraments, or on some virtue suitable to their age, and then assigns devotions that they should practice during that week, in addition to the rules that are prescribed. The priest should frequently remind them to recite the Rosary daily, to visit the Blessed Sacrament, even from their own homes, to examine their conscience, to receive the Sacraments at least once a week, and

to present themselves with modest attire, and so on. These congregations, or gatherings of girls, later produce a great good, because if they marry, they will easily teach their children what they themselves have learned, and entire families will be sanctified.

56. Furthermore, the bishop must exercise the greatest diligence in selecting confessors. The direction of the consciences of all the subjects depends on the confessors, and one confessor who is ignorant or of bad morals can ruin the entire region. Therefore, the bishop should not approve anyone until he is certain of his integrity and doctrine, by examining him in moral theology. Some bishops grant the faculty to hear confessions indiscriminately to all Lenten preachers, and to all others who have already been approved in other dioceses. But other bishops feel scruples about this, and rightly so, because afterwards so many evils are observed to arise from confessors who are approved with blind guidance. If a prelate wishes to have confessors whose services he can use without scruple, in addition to the moral case conferences that are often held in many dioceses, he should establish moral academies in each region, twice or three times a week, making it known that no one will be admitted to hear confessions who has not attended these academies for at least a year, which are most useful (if not necessary) for those who wish to be versed in this science, as doubts are better discussed and doctrines are more firmly imprinted in the memory.

57. It would also be an excellent plan if the bishop were to establish, in the larger parts of his diocese, particular congregations of priests and clerics who are more devoted to spiritual life, where they would practice each week in the practical ministry of hearing confessions, or assisting the dying, or celebrating Mass, and sometimes practice a devotional exercise (commonly called a "Sentimento"), a colloquy, a sermon, or an instruction. These congregations would have their own particular rules, e.g., always wearing a cassock, not playing games, etc., so that the people will see them as dedicated.

[*Latin ed. p. 178*]

TRACTATE VII. ON THE FOURTH PRECEPT OF THE DECALOGUE. It matters not if this concerns few people; indeed, it is advantageous if it concerns many, so that they may be more cautious and dedicated in works of charity. And the bishops' diligence will be directed towards this, and also to ensuring that they merit well, at least by giving them Lenten sermons, or other sermons, or by sending them on some mission, or to perform spiritual exercises, always urging them to preach in a simple and popular style, if they wish to bring about fruit from their sermons.

Furthermore, as Roncaglia rightly points out with Quarti and Pasqual., the bishop is bound to diligently ensure that his priests celebrate Mass with due attention and reverence, as befits such a sacrifice, without the trampling of words and ceremonies, as is impiously done with common scandal

by some, if not most, priests; and this trampling, when it is noticeable (as it necessarily is), is certainly a mortal sin, as will be explained when speaking of the Eucharist, volume 2, treatise 15, chapter 4, paragraph 84. This point will be considered in that context, but with regard to bishops, it has been declared in the Council of Trent, session 22, decree on observance in the celebration of Mass, that they are bound (and because the matter is serious, the obligation is certainly serious) to prohibit in their dioceses that Mass be celebrated with such irreverence: "The Holy Synod decrees (these are the words of the Council) that the ordinaries of places diligently take care to prohibit all those things... which have induced irreverence (which can scarcely be separated from impiety)."

Thirdly, bishops must also give great care to the visitation of towns, which the Council of Trent strictly commands bishops to do in session 24, chapter 3, on reforms, where it is said: "Bishops should visit their own diocese themselves, or if they are legitimately hindered, through their general vicar or visitor, so that if they cannot visit the entire diocese each year because of its size, at least they should visit the larger part of it, but in such a way that the entire diocese is completed within two years, either by themselves or by their visitors." And it is added: "They should strive to complete the visitation as quickly as possible, but with due diligence." How many problems are resolved by a prelate by going around and inspecting things with his own eyes! It is impossible to govern a diocese as well through others as through one's own pastor. Saint Charles Borromeo, although provided with good ministers, did not neglect to personally visit, and with great effort, even the more remote regions of his diocese. He himself, on several occasions, traveled to some town for a visitation, traversing muddy and snowy places; and his life should be examined to see how much he worked and how much his visitations benefited others. It is also said of Saint Francis de Sales that, in order to visit some places, it was necessary for him to travel through such difficult and rough terrain that he had to wear stripped bark on his feet, so that he could not stand on his feet for several days. At one time, it happened that he had to sleep on leaves, and when asked why he did not endanger his life, the Saint replied: "It is not necessary for me to live; but it is necessary for me to fulfill my duty."

In these visitations, the bishop must ensure that his sheep hear the voice of their pastor. Oh, how much more powerfully the voice of one's own pastor moves than others! Saint Charles used to preach to them three times during a visitation. Furthermore, he must examine the children to see how they are being instructed; and in this way, he can address the negligence of the parish priests, correcting them, and even replacing a schoolmaster

to teach the children the doctrine of the parish.

[*Latin ed. p. 179*]

OF THE DUTIES OF BISHOPS. 167. Moreover, at least according to the example of others, it is incumbent upon him, especially in towns, to examine the priests in the ceremonies of the Mass, and to suspend, without any leniency, those who do not perform their duties properly. He can also summon approved confessors, and even parish priests, for examination, for a just cause; see Vol. 2, Tractate 16, No. 75. Above all, he should personally investigate the condition of all the priests in the region, questioning each one secretly, first about their duties, so that he may suggest what is necessary, and then about the failings of others, especially of parish priests and confessors, for example, how they perform their duties, with whom they associate, etc. Some vigilant bishops keep a memorandum book in which they note the good or bad qualities of each clergyman. These records can serve many good purposes, especially in making certain the selection of parish priests, confessors, and other ministers. And finally, he should inquire about abuses, scandals, and discord that exist in the region. During these visitations, he should strive to stir up zeal in the congregations of the laity, and to provide them with suitable assistance, by assigning a preacher and a confessor, if they are lacking. And at this time, he can also establish particular congregations of priests for missionary work, as mentioned above. It would also be advisable for the bishop to sit in the confessional during these visitations, either to hear confessions, or at least to listen to someone who might wish to speak to him in secret. Finally, he should not neglect to administer the sacrament of Confirmation during the visitation. It is well known that the bishop who unduly delays the administration of this sacrament gravely sins, because he deprives his flock of so great a benefit. Therefore, Castr. Salm. and Croix say that he is not excused from mortal sin if, for 8 or 10 years, he does not at least visit (and at his own expense, if custom does not require otherwise) the principal regions in order to administer this sacrament, provided that it is not morally impossible for him to do so.

61. — IV. It is the duty of the bishop to care for monasteries of nuns; therefore, 1. He must diligently oversee that the wishes of young women who desire to enter are explored, since the majority of them enter religion not by divine vocation, but by the urging of their parents; and thus it happens that they afterwards lead an unhappy life, and introduce laxity into the community, to the detriment of all. 2. At the time of visitation, which should be held each year in monasteries subject to him, according to Clem. Attende, concerning the condition of monasteries (regarding the visitation of exempt monasteries with regard to enclosure, see Vol. 3, Tractate 20, on privileges, No. 80), he should conduct a particular investigation, secretly questioning the nuns individually, in order to learn whether there is any

scandal or corruption of morals in the monastery. Nevertheless, he must be careful not to appear partial to any of the factions that may exist in the monastery. He should hear all, and then, after considering the matter, he should make suitable provisions. 3. He should not be too ready to grant permission for outsiders to speak with the nuns. He should be aware that affections are often not contracted at the beginning, but develop over time, and that prolonged familiarity with outsiders can be a scandal and the ruin of the entire monastery. And if the monastery is located outside his residence, the bishop should remind the vicar, to whom this matter pertains, to be very cautious and circumspect in granting such permissions. 4. He should also, several times a year, arrange for extraordinary confessors, at least to provide a remedy for those who have no opportunity for confession.

[*Latin ed. p. 180*]

TRACTATE VII. CONCERNING THE FOURTH PRECEPT OF THE DECALOGUE, or the sacrileges which some religious women commit, and that one should not believe these cases to be very rare; nor should one consider the request of the religious women, for those who are most in need are often the most difficult to assist; and when one is assigned [as confessor], one must obligate each of them to visit him, if not to confess, at least to converse, as decreed by Benedict XIV in his bull, *Pastoralis curæ*, who, explaining the words of the Council of Trent, session 25, chapter 10: "He [the extraordinary confessor] must hear the confessions of all," says: "Let each [religious woman] present herself to the extraordinary confessor, to perform the sacramental confession with him, or to receive salutary advice... so that others may not be considered to have had necessary reasons for seeking the help of the extraordinary confessor, while others are judged to be free from such necessities." It is also fitting that the bishop should not be induced to confirm extraordinary confessors for longer than three years. Finally, let spiritual exercises be given each year by a priest who is exemplary and experienced in the discipline of religious communities; I say this because, otherwise, it may happen that more harm than good is received.

62.—V. The bishop, as stated above, is bound to reside [in his diocese], but the parish priest more strictly; for he is the principal pastor of that flock. To the bishop, upon his ordination, is given a ring, so that by wearing it, he may remember that he is no longer subject to his own jurisdiction, but is the spouse of his Church, and that he should always assist her, as long as he lives. However, the Council grants that bishops may be absent from their diocese for three months for a just cause; but it should be noted that Benedict XIV, in his bull *Ad universæ*, declares that this cause (which is called *aequa* by the Council of Trent) should not be frivolous, nor for a vain pleasure: "Levity of spirit, the desire for pleasures, and other frivolous

causes are excluded," are the words of the Pope. St. Charles, when he was compelled to be outside his diocese, seemed to be bound in chains (as it is read in his life) because of the vehement desire he had to return sooner. Cardinal Bellarmine, although compelled by the Pope to reside in Rome, and outside his own church in Capua, but for the good of the universal Church, did not consider himself safe in his conscience, and therefore he renounced the episcopate.

63.—VI. The bishop is bound to correct and to prevent scandals more strictly than the parish priests, both because he is the principal pastor, and because, with his greater authority, he can better promote good, even invoking, if necessary, the help of the secular prince, as is done by many good bishops, and their wishes are fulfilled. This is that grave burden which even the saints among bishops greatly fear. Bishop Neriti Sanfelice, blessed memory, said: "How can I sleep, when I know that some of my sheep are lacking the grace of God?" It is true that this office is odious to many, and the bishop, in order to perform it well, must conciliate curses, aversion, and even dangers to his life; but the good shepherd gives his life for his sheep. The same Bishop Sanfelice said: "The one who accepts the episcopate must prepare himself, either to be inquired about, or to be poisoned, or to be condemned." In order to properly address scandals, it is necessary that the bishop diligently inquire, not only from the parish priests, or from the vicars forane, who often, for human reasons, or lest they seem negligent, remain silent; but also that he investigate from other zealous priests, whom he has appointed in the various parts of the diocese for this purpose, so that he may be more certain of all that they know. And when he

[*Latin ed. p. 181*]

ON THE DUTIES OF BISHOPS. 169 Parish priests and vicars should promptly present themselves to the bishop upon their arrival, and be quickly assigned duties, so that they may readily return to their parishes, and so that they may not offer the excuse that they could not wait longer. 64.—VII. The bishop is obligated to distribute alms. The Church provides the bishopric with revenues not so that the bishop may lavishly spend them at his pleasure, but so that he may assist the poor; the patrimony of the poor is the bishop's table. Saint Gregory says that almsgiving is the first work of mercy that a pastor must offer to his flock. How many evils can a bishop prevent through almsgiving! How many betrothed live in sin because they lack the means to consummate their marriage! How many children, through poverty, sleep with their parents, or boys with girls, in the same bed, with such ruin to souls! Therefore, good bishops should inquire through the parish priests about the needs that exist, and they should instruct them to inform them whenever something arises. I know that Doctors (1) can say that a beneficiary may retain surplus funds for his support (it is understood that this is always in cases where the poor

are not in grave need) in order to spend them on acquiring revenues for the church, or to provide for other, greater needs in the future; I also know that holy bishops did not bequeath money, or land purchased, but rather alien property. It is unbecoming of a bishop, said Saint Charles, that he should be known to have retained money in his coffers. And Saint Thomas of Villanova said that if he had left money at his death, he would consider himself condemned. 65.—Finally, I will omit a discourse on other duties of the bishop, such as the Mass, which he, more than the parish priest, is obligated to offer for the benefit of his flock on feast days; the access that he must constantly maintain to those subject to him, and especially to the parish priests and vicars, whom he is obligated to admit to his presence promptly; and also to inquire from the capitular vicar about all that he has done, as prescribed by the Council of Trent, Session 24, chapter 16, on reform. But I cannot refrain from saying something about the good example that he must give to all. If the pastor desires that the sheep ascend the mountain, it is necessary that he himself go first. The bishop is that lamp placed by God upon the candlestick, to shine upon all who are in the house of the Lord. Therefore, as Saint Paul said to Titus, the prelate must show himself an example of all the virtues that he desires to see in his flock. Let him be an example of gentleness, and, when possible, of kindness, even to the ungrateful and hostile who harass him, repaying evil with good. We have clear examples left to us by Saint Charles, Saint Francis de Sales, and most recently, Bishop Emilius Cavaliere of Troja, of whom it was said: He who wishes to be favored by Bishop Cavaliere must strive to merit his disapproval. Let him be an example of poverty. It is true that a bishop may, without doing injustice, spend as much as is fitting for his proper support, but in all things he should ensure that holy poverty shines forth. Poverty in having a moderate family; that only so many people serve him as are sufficient to meet his legitimate needs. Poverty in dress, and in modest and simple household furnishings; for a bishop who adorns his palace with luxurious furnishings, with which laymen are delighted, does not, in truth, edify those before him. Saint Charles removed all finery, tapestries, hangings, and curious images from his house. Poverty in frugal meals; and it is well known that nothing else can more (1) kilb. 3. n. 491. Quær. IV.

[*Latin ed. p. 182*]

TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE. It is among the common people to reconcile ecclesiastical matters with frugality in food: "For it is permitted to live off the altar, but not to profit from it." Canon 1, Dist. 44. And the Council of Trent commands that they be content with modest furnishings and meals, and with frugal fare. Session 25, Canon 1. Likewise, let the example of prayer be followed: Cardinal de Aretio would descend into the church to pray before the Blessed Sacrament,

in order to move others by his example. Regarding mortification, it is not fitting for a prelate to abstain from certain comforts. Regarding solitude, one should not engage in secular customs unless out of necessity. Regarding modesty, one should avoid dealings with women, and if it is necessary, one should act with the utmost caution with them. Regarding zeal, one should strive to interweave words about God in all private conversations, as was the custom of St. Charles. 66. — I have spoken of the laity, and how the salvation of the faithful depends on good laypeople. Now I say that the salvation of the entire diocese depends on good bishops; for the bishop promotes good clergy, good priests, chooses good confessors and good pastors: by his good example and vigilance, he contributes greatly to ensuring that they persevere in their integrity, and thus piety flourishes throughout the diocese. Therefore, I have spoken more fully on this matter concerning the duties of pastors than on others, because in this matter is involved the common good or harm, which is entirely dependent on the good or bad leadership of the pastors.

TREATISE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE. CHAPTER I. ON THE KILLING OF ONESELF. 1 and 2. When is it permissible to expose oneself to danger of death? — 3. Concerning the castration of boys. — 4. Concerning drunkenness. — 5. Is it permissible to become intoxicated for medicinal purposes? — 6. Is it permissible to do so to avoid killing? — 7. Is it permissible to induce another to become intoxicated, in order to prevent him from a greater evil? — 8. What faults are imputed to a drunkard, and concerning the sins in cause. 1. — To no one is it permitted, directly and with intent, without divine authority or inspiration (as some martyrs have brought death upon themselves without guilt), to kill oneself. Likewise, it is not permissible positively to expose oneself to grave danger of death; therefore, funambulists (who perform tricks on a rope from high places) and others who drink poison, or allow themselves to be bitten by vipers, sin (1). It is said directly, because indirectly, at times, it is permissible to expose oneself to danger for a just cause, as the Doctors commonly teach (2). Hence, they say that it is possible, indeed necessary, for a soldier to remain in his place, even if he foresees that he will die, and this is common. They say (2) that it is permissible to give food to a friend in need, or a plate in a shipwreck, even if one has already taken possession of it; thus say Tolet, Lessius, Sylvius, Lugat, Salmeron, Bussemaker, Victoria, and others commonly, against Soto and Laym, and it is very likely, because one thing is to bring death upon oneself, and another is to omit to defend one's life, which is permissible for a just cause; and this is expressly taught by St. Thomas (1)

Lib. 5, n. 36g, v. Notand. — (2) *Lib. 5, n. 367.*

[*Latin ed. p. 183*]

ON SELF-DESTRUCTION.

1. It is said that "to deliver oneself to death for the sake of a friend is a perfect act of virtue," and therefore the virtuous man desires this act more than he desires corporal life.

2. It is said that it is permissible, in the case of a fire, to throw oneself from a window, since it is evident that death is imminent in order to escape; thus say Laym, Lessius, Luguentius, Phil. Bussemier, Salmeron, Sporer, and Elbel, who permit this even to a condemned criminal, sentenced to death or perpetual imprisonment.

3. It is said by Bonaventure, Luguentius, Lessius, Salmeron, Trullius, etc., that it is permissible to set fire to a ship, even with evident danger to one's life, in order to prevent it from falling into the hands of the enemy and causing a greater common loss.

4. It is said by Laym, Bussemier, and Mazzotta that it is permissible for a virgin to expose herself to the danger of death, but not to kill herself, in order to avoid being violated; and this does not seem improbable, both because of the love due to chastity, and because of the danger of sin that is always present in such a situation.

5. It is said that it is not permissible for a condemned criminal to flee, even if he can, and even to present himself to the judge in order to be punished, even if he is to be punished with death. Indeed, Vasquez, Bonaventure, and others say that the condemned criminal could even kill himself if the judge appointed him as his own executioner; but this is generally denied by Suarez and St. Thomas, etc., who say that self-destruction is intrinsically evil. However, it is generally permitted for the condemned criminal to ascend the scaffold, to place his neck before the ax, since these actions are remote from death.

6. It is permissible, indeed laudable, for Carthusians to abstain from meat, even with danger to their lives, as Sanchin, Bussemier, Salmanton, etc., say. But if they were to eat meat in such a danger (provided it is at least probable), they would not sin, as Azorín, Medrano, and Victor say. Indeed, if they had no other food than meat, they are obliged to eat it.

7. It is said that it is permissible for penitents and those fasting to mortify themselves out of love for virtue, even if their lives were to be shortened by many years, provided that the penances are not immoderate.

8. It is permissible, shortly before death, to make oneself lie down on the ground, as is customary among Trappist monks, as Bussemier says with Vasquez. Furthermore, it is commonly said by Soto, Bonaventure,

Salmeron, etc., that no one is obliged to preserve life by extraordinary and very painful means, such as allowing oneself to have one's leg cut off or a stone removed from the bladder. Thus, Lessius, Sanchin, Escobar, Turr, Salmeron, Bussemier, etc., say that a sick virgin is not obliged to submit to the hands of a surgeon to cure her infirmity; she may, however, consent to it. It is, however, required that she be cared for by another woman.

9. On the other hand, just as it is not permissible to kill oneself, so it is not permissible to mutilate a limb unless to preserve life. As for whether it is permissible to castrate boys in order to preserve their voices, Laym, Luguentius, Bussemier, Salmeron say no, with the common opinion; but others affirm it, with Trullius, Salonio, Elbel, Mazzola, Pasquius, and Tamburin, provided that the boy consents, and that there is a clear danger to his life; this is because, as they say, the preservation of the voice seems to be a matter of great importance for the poor, as it offers advantages in terms of fortune and status; furthermore, eunuchs seem to be useful to the common good, since their singing helps to keep the people devoted in the churches; finally, because it is done daily, and tolerated by prelates.

(1) *Sententiae*, Dist. 29, q. 1, a. 4, ad 3.

(2) *Homo Apostolicus*, Lib. 3, n. 366.

(3) Ibid., n. 367.

(4) Ibid., Quær. II.

(5) Ibid., cit. Quær. II.

(6) *Homo Apostolicus*, Lib. 3, n. 369.

(7) Ibid., n. 370.

(8) Ibid., n. 371.

(9) Ibid., n. 372.

(10) Ibid., n. 374.

[*Latin ed. p. 184*]

TRACTATE VIII. CONCERNING THE FIFTH COMMANDMENT OF THE DECALOGUE, which is sobriety, as taught by St. Thomas and St. Augustine, is considered perfect and gravely sinful when anyone, knowingly and willingly, deprives himself of the use of reason through wine, for the malice of drunkenness consists, according to St. Thomas, in the fact that a man, knowingly and willingly, deprives himself of the use of reason (1). From this, it follows that 1. one does not gravely sin if he does not reach the point of total loss of reason, but remains capable of discerning between good and evil, even if his head may waver; this is the common opinion of Cajetan, Layman, Tolet, Wigand, Holzmüller, Salm, Elbel, and others (2). It also follows that 2. according to St. Thomas and others, one does not gravely sin if, while drinking, he does not judge that the drink is capable of causing intoxication, even if it is immoderate; St. Thomas states in the aforementioned passage, "It is not mortal drunkenness when someone perceives that

the drink is immoderate, but does not judge that it will cause intoxication." Nevertheless, one must be warned, as St. Thomas and others teach, that if someone is frequently found to become intoxicated by the same amount of drink, he is not excused from mortal sin; nor is he excused, if he takes an amount that he knows is already capable of causing intoxication, even if he afterwards seeks sleep, because he has already committed an intrinsically evil act.

5. — It is questioned: Is it permissible to become intoxicated if this were necessary to free oneself from a mortal illness? Many permit this, such as Lessius, Castricius, Layman, Tolet, Roncaglia, and Salm, along with Sylvius, Cajetan, and Sylvius, saying that eating and drinking are grave matters when they are immoderate, but that what is necessary for preserving life cannot be called immoderate. Others deny this, such as Tournhem, Petrocorius, Felix, Potthast, and Holzmüller, saying that the voluntary deprivation of reason is intrinsically evil. We, however, say that drinking wine directly with the intention of becoming intoxicated is intrinsically evil, and therefore it cannot be permitted; thus, it would be illicit to become intoxicated in order to numb the senses, so as not to feel pain from an incision or a burn; but it is not so when wine is taken as a remedy to expel or correct melancholy humors, just as it is permissible for a mother to take medicine, as we shall say later (n. 23), even if, by accident, the expulsion of a living fetus occurs (3).

6. — It is questioned: Is it permissible for someone to become intoxicated to avoid death that others threaten him with, unless he becomes intoxicated? Many affirm this, such as Lessius, Bonacich, Castricius, Layman, Busembach, etc., saying that in such a case, the deprivation of reason is not intended, but is permitted, as was said in the preceding case. But it is more probable that Azor, Wigand, Tournhem, Holzmüller, Salm, etc., deny this, who rightly say that in the preceding case, it is not permissible to allow drunkenness, insofar as the danger is intrinsic, such as the illness that is desired to be expelled; just as it is not permissible for a mother to expel a fetus to prevent it from being killed by its parents, since this is intrinsically evil, as we have from proposition 34, from the decrees of Innocent XI, and as St. Augustine teaches in sermon 232 on time, where, speaking of one who would be forced to become intoxicated, he says: "Even if it were said to you: Either drink, or die, it is better that your flesh should die, than that your soul should die through drunkenness" (4).

7. — It is questioned: Is it permissible to induce a neighbor to become intoxicated, so that he is prevented from committing a greater evil, such as sacrilege or murder? Some deny this, but the opinion of Lessius, Medina, Gobius, and others does not seem improbable, for the reason stated in treatise 4, n. 30 (1). 2. 2. q. 150, art. 2. — (2) Lib. 5, n. 75. — (3) N. 76.

— (4) N. 76. Question II.

[*Latin ed. p. 185*]

ON THE KILLING OF A NEIGHBOR. 173 where it is said with Soto, Sanch, Cajetan, Mol, Nav, Castr, Bonac that it is permissible to urge someone to commit a lesser sin (although of a different species), in order to free him from a greater sin which he is determined to commit (1). 8. — It is questioned whether all the evils committed in a state of drunkenness are imputable to the drunkard's guilt. Answer: If the drunkenness is not voluntary, then the evils that follow from it are not sinful. But if it is voluntary, then all foreseen evils, and even those that ought to have been foreseen morally, are sinful. Therefore, the foreseen evils are those which drunkards ordinarily commit, or which someone knows from previous instances of drunkenness that they are likely to commit, and also all sins to which they know themselves to be inclined; for when in a state of drunkenness, the use of reason being lost, nature necessarily acts, and it easily bursts forth into those vices to which it is inclined. On the other hand, other evils that happen by chance are not considered foreseen (2). However, Lessius and the Salmanticenses (3) rightly point out, along with others, that the gravity of the sins committed in a state of drunkenness must be taken according to the measure of awareness and voluntariness of the person in that state, that is, in drunkenness. What the Salmanticenses say with Soto, n. 30 and 31, is that the evils of actions, such as murder, fornication, etc., are imputable, but not the evils of words, such as insults, blasphemies, and perjury; because, as they say, those words uttered without the use of reason are purely material, like those uttered by a parrot, and therefore they do not have formal malice. I agree with this opinion concerning insults to people, because truly, when they are uttered by a drunkard, they are not held to be blameworthy, provided that he does not reveal any infamous crime; but not concerning perjury and blasphemies, because these, although uttered materially, are always offensive to God; and if they are not voluntary in the act, they are voluntary in their cause. CHAPTER II. ON THE KILLING OF A NEIGHBOR. 9 and 10. On killing by public authority. — 11. For one's own defense. — 12. The opinion of a certain Neoterist is refuted on this point. — 13. On the killing of tyrants, is it ever permissible? — 14. On the invasion of honor. — 15. Of property. — 16. Of chastity. — 17 and 18. For the defense of a neighbor. — 19. Is it permissible to prevent an aggressor? — 20. On adultery, etc. — 21. On the killing of an innocent. — 22. On abortion. — 23. Do pregnant women incur excommunication, etc.? — 24. On the doubtful animation of the fetus. — 25 and 26. Can a mother take a drug with the risk of abortion? 9. — To no one is it permitted to kill a man, except by public authority, or for one's own defense. Certainly, those condemned by public authority can be killed, and also those proscribed (commonly called "Fuorgiudicati"), provided they are

found in the territory of the one who has proscribed them. However, even to the satellites it is not permitted to kill a fugitive or a rebel, even if he has already been condemned to death, unless there is a special order from the prince. This order, however, the prince can give when the accused has already been condemned, or convicted, or sufficiently defamed of some capital crime, and if he were allowed to flee, greater evils might be feared from him, as Layman, La-Croix, Elbel, and others (4) say. On the contrary, the prince cannot order the killing of a person detained in prison, who has not yet been condemned to death, even if private knowledge existed that he deserved death; provided (1) Lib. 5, n. 77, v. Quær. — (2) Cajetan, 2.2, q. 150, a. 4; Azor, 1.7, c. 6; Lessius, 1.4, c. 5, n. 25; Salmanticenses, tr. 25, de V. præcept., cap. 2, ex n. 26. — (3) Lessius, loc. cit., and Salmanticenses, n. 33. — (4) Lib. 3, n. 376 and 380, v. Decius.

[*Latin ed. p. 186*]

TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE. It would not be notorious, nor would there be a danger of sedition, if one were to delay the execution of a condemned person, or if a prince were to legally condemn him (1).

10. Two points must be noted: 1. Clerics, even though they possess secular authority, cannot condemn anyone to death unless they obtain express dispensation from the Pope. Otherwise, bishops who exercise temporal dominion in a certain region can properly delegate their authority in matters of bloodshed to secular authorities; so say Bonaventure, Trullensis, and the theologians of Salamanca, following St. Thomas (2). 2. A judge is bound to grant a condemned person time to confess, and even to receive Holy Communion (unless doing so would cause grave harm); for then the divine precept urges, since the accused is truly at the point of death; therefore, he may receive Communion even without fasting, as Suarez, Lugo, Navarrus, and the theologians of Salamanca, among others, say (3). If, however, the accused, after being upon being warned, refuses to confess, execution may be ordered (4).

11. Furthermore, for one's own defense, it is permissible to kill an unjust aggressor, provided it is done with moderation and due consideration for the protection of others, namely, if greater harm is not thereby inflicted on others than is necessary to avoid one's own danger. This is permitted by all human and divine law, as St. Thomas (5), the Roman Catechism (6), and all the Doctors say, and it is expressly stated in chapter 3 of the Decretals concerning excommunication, where it is said: "All laws and all rights permit the use of force to repel force." A certain author of the rigorist school asserts that St. Augustine and St. Thomas held that it is not permissible to kill a person, not even for the defense of one's own life; but he is entirely mistaken, for St. Thomas, in the passage cited, teaches expressly that it is permissible, provided (he says) that homicide is not

intended, but only one's own defense; and in art. 7 ad 1, he explains what is to be understood in St. Augustine. It does not contradict this to say that the spiritual life of one's neighbor should be preferred to one's own temporal life, because this order of charity (as Peter of Corvo and other Doctors commonly say) applies only when one's own life is absolutely necessary for the spiritual salvation of one's neighbor who is in extreme need (e.g., if a child is in imminent danger of death without baptism, then there is an obligation to risk one's own life in order that he may be baptized), but not when the aggressor voluntarily puts himself in danger of damnation; for then his wicked will cannot deprive others of the right to protect their own lives (7).

12. But a certain modern theologian, Eusebius Eraniste, in his defense of the teaching of St. Thomas concerning the killing of tyrants, in his first letter, page 54, number 111, on this subject, goes on to discuss whether it is permissible for a private person to kill an unjust aggressor, and attempts to prove from the same St. Thomas that it is not licit for private persons to kill aggressors, even to save their own lives. Therefore, we must examine the opinion of the Angelic Doctor. St. Thomas writes in 2-2, question 64, article 7, that an act can have several effects, one in intention, another outside of intention. From the act of self-defense, two effects can follow: the preservation of one's own life, and the death of the aggressor; therefore, St. Thomas says that the act which is done to preserve life is indeed licit; but it can become illicit if it is disproportionate to the end of preserving life, as would be the case if someone, for his own (1) Book 3, number 377. (2) Number 378. (3) Number 379. (4) 2-2, question 64, article 7. (5) Page 3, on the fifth precept, number 8. (6) Book 3, number 380. (7) So is he that by violence executeth of the unwise.

[*Latin ed. p. 187*]

ON THE KILLING OF A NEIGHBOR. 175. One might employ greater force than is necessary. As the Angelic Doctor says: "However, some act, even if arising from a good intention, can become illicit if it is not proportionate to the end." Therefore, if someone uses greater violence than is necessary to defend their own life, it is illicit. But if they repel violence moderately, the defense is licit. For, according to the laws, it is permissible to repel force with force, with moderation, for the sake of just defense. Nor is it necessary for a person to forgo an act of moderate defense in order to avoid the killing of another, because a person is more obligated to protect their own life than the life of another. But, as has been stated above, it is not permissible to kill a person unless it is done by public authority for the common good; therefore, it is illicit for a person to intend to kill another in order to defend themselves, unless that person has public authority.

From these last words: "It is illicit for a person to intend to kill another in order to defend themselves," Eusebius of Eraniste infers that St. Thomas

teaches that a person must restrain themselves within the limits of just defense, so that they have no intention, not even the slightest, of killing the aggressor, even if it is necessary to preserve their own life. Therefore, he concludes that for such a killing to be blameless on the part of the one defending, it must occur as a mere accident, so that the aggressor is killed, but the one defending has no part in the killing. And so, it should be understood that St. Thomas means: "It is illicit for a person to intend to kill another."

Juvenal expresses himself in a similar way, saying that the defender is immune from blame in such a killing "when it happens through the aggressor himself, who rushes upon the defender's sword"; so that the aggressor dies not from the wound inflicted by the defender, but from the wound that the aggressor inflicts upon himself by attacking. Or, as another author of the same opinion expresses it: "If the aggressor transfixes himself with the defender's sword."

But I say, it would not be repelling force with force, but rather, it would be wanting to repel force without force. Repelling force with force implies that the one defending uses a force that corresponds to and is proportionate to the force of the aggressor. And St. Thomas indicates this sufficiently when he says that an act of defense is illicit when it is not proportionate to the end: "However, an act can become illicit if it is not proportionate to the end." Then he adds: "And therefore, if someone uses greater violence than is necessary to defend their own life, it is illicit."

Note the words: "If someone uses greater violence than is necessary"; therefore, the one defending would be defending themselves immoderately and culpably if they used greater violence than was necessary. But, I say, if the aggressor is already attacking with a sword, how can it be upon the one defending to repel force with force, if that person can do nothing but use their hands, or use a sword only to repel the blows of the aggressor without harming him? This defense is clearly disproportionate to repelling the force of the aggressor. Who would not say that this defense is joined with a morally certain risk of undergoing death? For it is very difficult, indeed morally impossible, for the defender, if they cannot flee or hide, to avoid death in this way.

Furthermore, St. Thomas, as is read at the beginning of the cited article 7, absolutely admits that it is licit for the aggressor to kill in order to defend their own life; thus he says: "But it is objected that Exodus 22:2 says: If a thief be broken into a house, and be smitten, so that he die, he shall be stoned: as according to the law. And if he be taken out of the house, and

smitten, so that he die, then he shall pay the wholly the loss of the house."

[*Latin ed. p. 188*]

TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE.

176. If someone dies by a blow, the one who struck the blow is not guilty of murder. But it is much more permissible to defend one's own life than one's own house. Therefore, even if someone kills another in self-defense, he is not guilty of homicide.

Note the words of Exodus and St. Thomas: "He struck; therefore he killed." Thus, both Scripture and St. Thomas admit that it is permissible to strike and kill an enemy in defense of one's life. However, if the attacker is in no way harmed, and the homicide occurs as a mere accident, because the attacker himself inflicts his own death by rushing towards the defender's sword, then the one who struck the blow cannot be called a murderer or an attacker. But St. Thomas says: "Therefore, even if someone kills another in self-defense, he is not guilty of homicide."

Therefore, St. Thomas absolutely permits the aggressor to be killed in order to protect one's life, even if he is wounded. For killing implies positively striking a person. However, merely acting with a sword to repel the enemy's blows, when the only danger is that the attacker himself is pierced by the defender's sword, is not killing or striking, but merely allowing, or providing an opportunity for the enemy to strike and kill himself. But St. Thomas says: "If he kills, he is not guilty of homicide."

It remains to explain how St. Thomas's statement should be understood: "It is permissible for a man to intend to kill a man in order to defend himself." Cajetan interprets "not intend" as meaning that the killing is not taken as a means of one's own defense, but only as an effect of defense. But this interpretation seems too subtle to Dominic Soto; therefore, Soto says, citing book 5, question 1, article 8, that it is always permissible to choose a necessary means to achieve a licit end: "He who wants an end, can rightly will also the means that are necessarily connected with that end."

Therefore, he adds that when a defender kills his attacker, lacking any other means to avoid death, he is not considered to intend the attacker's death, but only his own defense: "Furthermore, when someone is attacked, and kills the attacker in any way, because there is no other way to stop the attacker, he is not considered to intend the death of the man, but only his own defense."

In a similar way, Sylvius explains St. Thomas, saying: "If you intend anything other than to defend yourself, and evil results, it is vengeance, not mere defense." This explanation is followed by Du-Hamel and Father Concina, in the cited passage, number 8. But Eusebius Eraniste objects, saying: "St. Thomas teaches that it is 'illegitimate' for a man to intend to kill a

man in order to defend himself, unless he has public authority." Therefore, for those who lack public authority, it is always illegitimate to kill a man.

However, it should be noted that St. Thomas does not say that it is illegitimate for a private person to kill a man, but that he intends to kill. Therefore, we respond that those who have public authority can not only kill a man, but also intend his death; but for private individuals, it is never permissible to intend the death of the attacker, but only to kill the attacker out of necessity to preserve one's own life, in which case they intend not the enemy's death, but only their own defense.

Furthermore, the angelic Doctor was the greatest admirer of canon law; and as we have seen, the canons declare very clearly that it is permissible to kill the attacker in order to avoid one's own death. Therefore, St. Thomas must be explained, lest he be said to contradict the sacred canons, and therefore the aforementioned authors seek to explain the text of St. Thomas, and they explain appropriately how his words should be understood.

[*Latin ed. p. 189*]

OF THE MURDER OF A NEIGHBOR. 177 It is undoubtedly a work of servile charity and perfection, and in conformity with the counsel of the Gospel, to prefer suffering death rather than killing an aggressor, so that he may not perish eternally. However, (Soto, Concina, and others say) the defender should not be considered to have found a means of defense when attacked, as this would be a mortal sin. This is counsel, but not a precept; for the opinion that it is unlawful to kill an aggressor, even in order to avoid death, is not only contrary to the common opinion of theologians (as we have seen), but Salonius calls it rash, and Dominic Soto (in the aforementioned passage) calls it a manifest error; and Father Concina, in number 7, says that Soto speaks reasonably, because such an opinion destroys the right that is inherent in human beings to protect their own lives: "Indeed, this opinion (these are the words of Concina), although it may seem to present the image of evangelical charity, nevertheless subverts all rights; and certainly it completely removes that right which is inherent in nature to preserve one's own life." Furthermore, Concina adds that this opinion perverts the order of Providence; in his words: "This opinion also disturbs the order of Providence, by which it is permitted for the temerity of the wicked to deprive men of their lives. Moreover, this opinion provides arms for the malice of the wicked to destroy the good, and to execute any evildoer: all of which, in order to be removed, requires that the lives of scoundrels be taken." Previously, Comitolus wrote in book 4, question 10, number 10: "The contrary opinion provides certain arms for injustice, for the killing of the good, for the overthrow of the commonwealth, for tyranny and vice." The adversaries object that this is contrary to the words of St. Augustine in letter 47, also 154, number 5, to Publicola, where it is said: "Concerning the killing of men, so that no one may be killed by them, I

do not approve of this counsel, unless it is a soldier, or is held in a public office, so that he may not do this for himself, but for others, having received legitimate authority, if it is appropriate for his person... It is said, we do not return evil for evil, lest vengeance delight us, which nourishes the mind with another's evil." But Du-Hamel responds wisely (volume 5, treatise on the 5th precept, chapter 2, end) saying: "Augustine is not speaking of the one who is forced to defend himself and kills, when there is no other way to save his life; but of the man who kills a wicked man, so that he himself and others may not be killed." He says, so that he himself and others may not be killed: therefore, the Saintly Doctor is not speaking of an unjust aggressor, but of a wicked man, from whom the one who is killed fears his own death and the death of others. Furthermore, they object that this is contrary to the order of charity, by which we are bound to prefer the spiritual life of our neighbor to our own temporal life, according to the words in book 2, number 27: "But this law of charity (Father Concina rightly responds) only obliges when our own temporal life is a necessary means to the salvation of our neighbor. Moreover, he who attacks me does so through his own fault, and therefore my life is not necessary for his salvation, since he could refrain from his unjust aggression." Thus says Father Concina, and so also teaches St. Thomas, 2.2, question 25, article 8, and especially he declared this sufficiently in the aforementioned question 64, article 7, where he said, as we have already noted: "It is not necessary for salvation that a man should omit an act of moderate defense in order to avoid the killing of another: a man is more bound to provide for his own life than for the life of another." Father Concina adds prudently that if the attack is made with great fear to the conscience, it can be hoped that such a defense, even with the killing of an aggressor, will be a virtuous act.

[*Latin ed. p. 190*]

TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE.

178. A man of great virtue will be free from blame; on the other hand, if a man is not of great virtue, it will be difficult for him to remain innocent; for in practice, it is difficult for a man to kill an aggressor without harboring a spirit of vengeance, intending only to defend his own life, and not the death of his adversary; therefore, St. Augustine wisely warned: "Let us not resist evil, lest we be upon revenge." But it is one thing to say that, in practice, men of little virtue, when killing their aggressors, are rarely free from sin; it is another thing to say that it is never permissible to wish to kill unjust aggressors, even if it is necessary to save one's own life; for such an opinion is too rigid and unreasonable, and would torment the consciences, not only of the wicked, who at least, when speaking speculatively, do not sin, believing that they can lawfully kill their aggressors to avoid their own death; but also of many who are fearful, if they are held to believe that they

cannot harm aggressors, even if those aggressors are acting unjustly, and that there is no other way to preserve their lives.

13. Now, let us consider whether it is ever permissible to kill a tyrannical prince. It must be understood that a prince can be a tyrant in two ways: in title, and in governance. A tyrant in title is one who, without any right, seizes power by force, depriving the rightful owner of it; or one who, having unjustly seized another's power, then peacefully possesses it. A tyrant in governance, on the other hand, is one who rightfully possesses the kingdom, but governs it unjustly, by committing many injustices and cruelties. Having explained this, some authors, but few, and of dubious authority, have foolishly said that it is permissible to kill both a tyrant in title and a tyrant in governance. Others deny that it is possible to kill a tyrant in governance, no matter how tyrannically he governs the kingdom; and even a tyrant in title, if he has unjustly seized the kingdom, but afterwards peacefully possesses it. On the contrary, they say that it is permissible to kill a prince who has unjustly seized the kingdom by force and continues to hold it by force, against the will of the people, who are only subject to him out of fear. But we say that it is always unlawful for private individuals to kill a tyrant, whether of the first or second kind. The reason is that subjects are bound by divine command to honor and obey their rulers, even if they are unjust and perverse, as St. Peter teaches: "Servants, be subject to your masters with all fear, not only to the good and gentle, but also to the froward." 1 Peter 2:18. Therefore, St. Augustine wrote that God gives the earthly kingdom to the pious and the impious, as it pleases Him. Therefore, when a prince possesses the kingdom, the subjects are always obligated to regard him as their own lord; for St. Thomas says that even if someone has unjustly usurped another's power, if afterwards the subjects recognize him as their lord, or if the former lord or another prince, superior to both, voluntarily grants him dominion over the kingdom, then he becomes the rightful lord of that kingdom: "He who seizes dominion by violence does not become a lord; and also, when the opportunity arises, one can repel such dominion, unless the true lord has been established, either by the consent of the subjects, or by the authority of a superior." St. Thomas, 2nd Sentences, Dist. 44, q. 2, art. 2. Therefore, since an usurper can become a rightful lord of the kingdom in many ways, the subjects must always obey their actual rulers; for it is not for them to judge whether those rulers rightfully or unlawfully possess the kingdom. And the subjects cannot refuse obedience to such rulers, so much so that...

[*Latin ed. p. 191*]

ON THE KILLING OF A NEIGHBOR. 179. They can deprive others of life and possessions within the kingdom. Subjects are to obey, not to judge the prince, who is subject only to God concerning the affairs of his lord, and is not dependent on any other earthly power. If subjects were to have

the right to judge the prince's title or possessions, there would never be a lack of those who, with evil intentions, could find a pretext to incite themselves against the prince. Azorius wrote: "This opinion concerning the lawful killing of a tyrant," although confirmed by the testimony of so many authors, "seems doubtful to me." For although evident proof of a heinous crime does not require a judgment, it does require a sentence. Moreover, although such a tyrant may not have a right or title to the kingdom, he nevertheless has possession of it, from which he cannot be removed unless he is first heard and judged. The best reasons that this author presents to condemn the opinion that it is lawful to deprive a tyrant of life are these: no one, whether prince or private individual, can be deprived of life or possessions without first being heard, or at least condemned by his legitimate judge. Subjects, however, never have the right to judge their actual lord. But he was wrong to say: "This opinion seems doubtful to me"; he should have said, "This opinion is improbable, false, utterly false to me," as previously written by Father Alphonsus Salmeron, Vol. 13, p. 14, in the apostolic constitution, Dist. 5, where he wrote: "Since it is commanded to us to obey princes indiscriminately, even the wicked, we must obey them, but only in those things that are not against the Lord. And furthermore, even if a prince has unjustly usurped the kingdom, we must consider him as a lord for the same reason, because it does not belong to private individuals to judge the rights of the prince. Therefore, since it is not the right of private individuals to judge princes, even if they have not justly acquired the kingdom, and even if they rule unjustly on their own account, the people are nevertheless justly subject to his tyranny." But there is another, more urgent and comprehensive reason why it is never lawful to deprive a prince of life, even if he has unjustly acquired and unjustly possesses the kingdom. Opposing authors object: "But he who occupies a foreign kingdom without any title, and possesses it without any reason, is not his lord, nor his prince, but a thief and an usurper." Granted (I reply), he is a thief, an usurper, and not a prince, nor a lord; I ask: Is this man like other men? And if he is a man, can he himself be deprived of life or property by those who have no right to deprive him of life or property? The common doctrine of the Saints is that no private person is ever allowed to kill a man, even a private person, however unjust he may be, unless he has public authority, or unless it is necessary to save his own life, as we said in the previous question: but speaking of public authority, it is certain that the axiom handed down by St. Augustine is: "He who kills a criminal without any public administration will be judged as a murderer." Book 1, On the City of God, chapter 26, in the middle. St. Thomas gives a reason for this, saying: "It is lawful to kill a criminal, insofar as it is ordered to the salvation of the entire community." 2nd 2nd, q. 64, a. 3. Then he adds that killing criminals is only permitted to princes who have public authority, to whom the care of the common good has been entrusted: "The care of the common good is entrusted to

princes who have public authority, and therefore it is only to them that it is permitted to kill criminals, and not to private individuals." Therefore, if it is unlawful for subjects to kill a tyrant in title, even if...

[*Latin ed. p. 192*]

180 TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE. Even if someone were to seize a kingdom without any right, and were to unjustly possess it, it would be all the more unlawful to plot the death of a prince who is considered a tyrant in his rule, but who rightfully possesses the kingdom. Furthermore, if it is forbidden for private individuals, because they lack public authority, to take a life, no matter how wicked the person may be, how much less is it permissible to kill a prince! It is entirely false to claim that there exists within a community of subjects some higher authority, independent of the prince, so that in the case where the prince governs the kingdom perversely, the entire community could deprive him of his kingdom and his life. The principle of John Gerson was exceedingly pernicious in this matter, who dared to assert that a monarch could be legitimately judged by the entire nation if he ruled unjustly; for he said that since the nation is the whole in relation to the prince, who is only a part, the supreme authority must necessarily reside within the nation itself. This principle, I say, is not only false, but exceedingly pernicious; for in this way, there would be two supreme powers in the kingdom, from which enormous schisms and the devastation of the kingdom would arise. St. Thomas recognizes no supreme authority other than that which is held by princes, to whom the care of the common good is entrusted: "The care of the common good is entrusted to princes who have public authority." Therefore, even if a prince were perverse, and the people burdened, the people are nevertheless bound to render obedience and submission to him, since subjects never have the right to judge matters pertaining to the actions of the prince, and much less to condemn him to death or to deprive him of his kingdom. Furthermore, it must be considered that if such a case were to occur in which a prince were murdered by his subjects, because of the wickedness of his government, which would be the greater evil, that which the prince was doing, or that which his death would bring about, which would occur in such a manner? After the subjects had been so incited against their prince, and had wickedly stained their hands in his blood, how many quarrels, schisms, and civil wars would immediately arise among them! Moreover, how many robberies, sacrileges, and massacres! Once the restraint of submission and reverence for the king had been removed from the people, to what wickedness would those who are inclined to evil not resort, now that the fear of public justice had already been removed? And St. Thomas wrote (opuscle 20, on the governance of princes, book 1, chapter 6), where he wrote: "It is dangerous for the multitude and for its rulers if anyone, through private presumption, should attempt the death of presi-

dents, even of tyrants." Hence, although the gentile emperors were impious and persecutors of the Church, nevertheless, because they possessed the empire, God commanded that obedience should be rendered to them in all things that were lawful. Thus, Lessius wrote (on justice and law, book 2, chapter 9, question 4, number 11): "Even if a prince rules tyrannically, he nevertheless remains superior; therefore, Scripture commands us to obey gentile princes as superiors, even if they were the greatest of tyrants, even though they persecuted the Church and compelled people to impiety; therefore, he cannot be killed by a subject." Molina wrote the same (on justice, etc., volume 4, treatise 3, question 6): "A tyrant is someone who, although he is truly the lord of the republic in which he exercises tyranny, unjustly administers it; therefore, it is unlawful for private individuals to kill a tyrant." And Gregory of Valencia wrote (volume 3, disputation 8): "A perverse tyrant, and one who has been expelled from the community, does not legitimately exercise the use of authority in governing..."

[*Latin ed. p. 193*]

ON THE KILLING OF A NEIGHBOR. 181 "No one is permitted to kill another." (The same was written by Cardinal Toletus in *Instruct.*, book 5, chapter 6, paragraph 16.) "It is not permitted to kill a tyrant who, although holding a legitimate title, treats his subjects tyrannically; and to assert the contrary is condemned as heresy at the Council of Constance." The same was written by Cajetan, 2.2, question 64, article 3; Soto, book 5, question 1, article 3; Prado, chapter 20, question 1, paragraph 3, number 21; Tapia, book 5, question 7, article 3, number 2; Bonac. d. 2, question ultimate, section 2, paragraph 3, number 2, along with Sylvester, Bannez, and Serra in the cited passage from St. Thomas. Suarez also wrote in *Defensio Fidei*, book 6, chapter 4, stating that this opinion is not only common but certain: "We have said that a prince, because of tyrannical rule, or for any crimes, cannot be justly killed by anyone with private authority. This assertion is common and certain; it is in accordance with the precepts of Peter (1 Peter 2:18): 'Be subject to every human institution, for the sake of the Lord.'" This is more specifically defined, and the opposite is condemned as heresy at the Council of Constance. Session 15. The proposition that was proscribed as heretical at the aforementioned council was: "Any tyrant can and should be lawfully and meritoriously killed by any of his subjects, even through secret plots, or subtle flattery, or adulation, notwithstanding any oath or agreement made with him, or the judgment or mandate of any judge whatsoever." Session 15. But what remedy is there if the rule of a prince is excessively tyrannical? St. Thomas says that the remedy is to turn to God for help. "If absolutely no human help can be obtained against a tyrant, one must turn to the King of all, God, who is the helper in times of need." Furthermore, the most learned Dominic Soto writes (book 5, question 1, article 8): "If the one who is being attacked is a king, a prince, or another

person who is very useful to the republic, and the person who is attacking is a lowly and insignificant person, to whom the republic is of no concern, then the life of the person being attacked should be sacrificed, and their defense should be abandoned." Understand this in reference to the death of a prince. This opinion does not please Father Daniel Concina, who says that everyone, by the laws of nature and charity, loves their own life more than that of another. But despite this, Soto's opinion pleases me, and it seems most probable: the reason is that everyone is bound to prefer the common good to any of their own temporal goods, and to endure any temporal loss in order to avoid a very serious harm to the community; and this very serious harm would certainly be inflicted upon the community, as we have considered above, if a prince were killed by his own subjects. It is permissible to kill an unjust aggressor privately, with due moderation and legitimate defense, if there is no apparent way to avoid death. But what applies with respect to the lives of private individuals does not apply with respect to the lives of rulers. There must be a very different consideration between the lives of private individuals and those of rulers: kings are the Anointed of the Lord, and therefore their persons are sacred, and their lives are precious, and are very necessary for maintaining the peace of the people and the common good. If an unjust aggressor is killed, the harm is only to him, and not to the republic; indeed, his death will benefit the common good, by suppressing the audacity of the reckless; but if a prince is deprived of his life by the hands of his own subjects, a great harm ensues, and an immense one, because of the number of injustices, disorders, and sophisms that will follow as a result.

[*Latin ed. p. 194*]

TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE. 14.—And for this reason, Navar, Azor, Molin, Lessius, Vasquez, Layman, Lugo, Roncaglia, Tapia, Gardenasio, Filliucca, and many others, along with St. Antoninus and Sylvester, maintain that a noble layman may kill, not out of vengeance, but only to defend himself from one who intends to inflict a serious offense upon him in terms of honor, and not merely with words (for words can be met with words, e.g., by lying in response, etc.), but also with actions, such as blows, beatings, or similar serious injuries, which, once inflicted, cannot be adequately compensated for by retaliation, which is not permitted, as stated in proposition 30, and condemned by Innocent XI, because that would not be defense, but vengeance. Therefore, after an injury has been inflicted, it is no longer permissible to strike the assailant, unless it is to prevent new attacks that, besides causing insult, would seriously injure the body, and no other means of defense is available. This applies to a noble layman, because it is not permitted to commoners, nor to clerics, nor to religious, since they are not bound by the same duty to flee; therefore, they are obligated to flee, whenever they can do so without

endangering their lives (2). Furthermore, even with regard to laypeople, this opinion is of little or no practical value, because, as Sylvester wisely observes, it is practically impossible, or very rare, for such a case to arise in which it would be permissible to kill in order to defend oneself (3). "Even if," says Sylvester, "honor is a good more valuable than wealth," we believe that there is either no case, or a very rare case, in which it is permissible to kill an aggressor solely for the defense of honor (3). 15.—Similarly, St. Antoninus, Suarez, Soto, Cajetan, Lessius, Bonaventure, Lugo, Roncaglia, Salm, and others commonly state that it is permissible to kill a thief who is stealing something of great value, provided that the thief is warned not to steal, or to return the item, and that he obstinately refuses to do so. This opinion is certainly held by St. Thomas (4), who, to prove that it is permissible to defend one's life even at the cost of killing the aggressor, cites the text of Exodus 22:2: "If a thief be found breaking in, and he be slain, the slayer shall not be guilty of blood." And afterwards, the saint adds: "But it is much more permissible to defend one's own life than one's own house." It is also supported by the passage in the Decretals, in the sixth chapter on exultation, where it is stated that it is permissible to defend one's property with a sword, whether temporal or spiritual (5). However, it is important to note that the value of the stolen item must be significant, because, as proposition 31, condemned by Innocent XI, stated, it is not enough that the value is merely one gold coin (i.e., one ducat), but neither is it enough that the value is eight or ten gold coins. Molin, Vasquez, and Salm state that it is a significant sum, the loss of which would cause a notable loss to the owner. Cardenas says that a sum of 40 ducats is a large amount with respect to any individual. But Viva and Elbel believe that, in this case, the sum is large if, upon its loss, the individual would lack the means to support himself and his family. Furthermore, the opinion of some Doctors is that a noble may defend himself with weapons against a thief who intends to take away from him even the smallest item, out of respect for the injury, because this, in such a case, does not seem so serious as to warrant the thief's death, as Diana and Salm rightly point out (6). Conversely, according to the more probable opinion of Lessius, Lugo, Vasquez, Busembach, Tanner, and Malder (against Salm, Bonaventure, etc.), a lord may lawfully kill a thief who intends to prevent him from recovering the stolen item (but of the value previously described), when no other means of recovering it is available; for then the thief is truly an aggressor (7): and this is permitted to laypeople for the defense of their property.

(1) St. Antoninus, 3, part 1, chapter 3. Sylvester, De Bello, question 4.

(2) Book 3, number 58.

(3) Sylvester, in 2-2, question 64, d. 7, question 9.

(4) 2-2, question 64, article 7.

(5) Book 5, number 385.
(6) Quæstiones, 2, question 2.
(7) Quæstiones, 5.

[*Latin ed. p. 195*]

ON THE KILLING OF A NEIGHBOR. 183. It is commonly held by Lugo, Becan, Lessius, Tanner, Salm, Elb, Busemb, and others that it is permissible, even for clerics and religious, to kill, and this is demonstrated by the cited text, chapter *Dilecto* (1), and that they do not, in such cases, incur irregularity (2). And the defense that one can make of oneself can also be employed by one's servants; Lugo, Laym, Sporer, Salm, Elbel, and others (3). 16. — If it is permissible to kill an aggressor against property, all the more so is it permissible to defend oneself against an aggressor against chastity, since there is no other means, as the Doctors commonly say. And although, once the assault has been committed, it is not permissible to avenge oneself on the aggressor, it is nevertheless rightly pointed out by Lugo (and I also add that it is advisable) that a woman who has been wronged may, provided she does so immediately after receiving the injury, insult the one who inflicted the injury, with her fists, slaps (and, as others say, even with some wound, but not a serious or dangerous one), in order to show her constancy and the distress she has felt, and thus he will not dare to harass her again (4). 17. — Just as it is permissible to defend one's own life, so too is it permissible to defend the life of an innocent neighbor, even by killing an unjust aggressor, as taught by St. Thomas (5), and others commonly. It is objected that the neighbor may surrender the defense of his life: but since he may surrender the right to defend himself, he cannot surrender his life, of which he is not the lord. Magistrates, and even satellites hired for that purpose, are bound by justice to defend the lives of the innocent, even at the risk of their own lives, when it comes to the common good, such as killing public robbers; thus Lessius and Salm. Salm, with Navar, Bonac, and others, say that private individuals are also bound to kill an aggressor against an innocent person, if they can do so without serious inconvenience; but Lessius and Lugo more plausibly deny this, because it cannot be done without great horror, which is to stain the human hand with human blood. However, the Doctors make an exception if the attack was necessary for the common good, or if it was against one's father, son, or brother (6). 18. — Thus, it is commonly said by Lessius, Filiuccius, Bonac, Lugo, Salm, Trullench, and others, that it is permissible to kill an aggressor against chastity, or honor, if he intends to offend by his actions, as stated in n. 12. But with regard to chastity, this is not understood when a woman expressly or tacitly consents: except, however, if she is betrothed to you, and you cannot protect yourself from dishonor unless you wound the aggressor (7). Thus, St. Antoninus, Lessius, Navar, Lugo, Molina, and Salm also say that it is permissible to defend the goods of an innocent person of great

value by killing the aggressor, when there is no other means; for in all these cases, the principle previously stated always holds, namely that the order of charity takes precedence over the temporal goods of the neighbor when the neighbor is in extreme necessity, but not when he voluntarily subjects himself to the danger of his own death (8). Note here the propositions condemned by Alexander VII, n. 18, and by Innocent XI, n. 30, 31, 32, and 33. 19. — Question I: Is it ever permissible to prevent an aggressor from killing by killing him? There are two opinions, but Soto, Azor, Covarr, Ronc, Busemb, Salm, and others are reconciled with this view, when they say that if one is morally certain that his enemy has determined to kill him, e.g., for certain (1) Book 3, n. 384. — (2) Book 7, n. 389. — (3) Book 3, n. 385. — (4) n. 386. — (5) 2-2, q. 60, a. 6, ad 2. — (6) Book 3, n. 390. — (7) n. 391. — (8) n. 392.

[*Latin ed. p. 196*]

TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE. If a person has already prepared weapons or ordered the assassination of another, then they can rightly prevent the crime if they cannot otherwise avoid the ambush and the danger of death; otherwise, if there is only some suspicion or doubt about this, it is not just to deprive a person of life based on mere fear (1). Furthermore, with regard to practice, it will be a very difficult case, and almost morally impossible, in which it would be permissible to prevent the aggressor; for it will be very difficult for the one who fears aggression to have certainty of the future aggression, unless he prevents it by killing the aggressor.

Question II. Is it permissible for an adulteress, in order to defend her life, to kill the man who attacks her? The adulteress is certainly bound to flee if she can, for in such a case it is not disgraceful for a noble person to flee, at least it is not a grave disgrace. But if she cannot flee without danger to her life, some Doctors hold that she is guilty of homicide if she kills, while others do not. We distinguish, along with Suarez, Layman, Castrop, Coninch, Salm, Ronc, Sporer, etc., as follows: If she foresees the imminent danger of the man's aggression, and boldly intends to carry out her wicked intention, then she cannot excuse herself from homicide and irregularity, because in that case, adultery is the imminent danger of homicide, as we say in the censures, volume 2, treatise 19, number 8; otherwise, if the danger is remote, and if the adulteress proceeds with caution (2).

Question III. Is it ever permissible to kill an innocent person? Directly, it is never permissible; but in certain cases, it is permissible indirectly. 1. If a tyrant threatens the ruin of the state, unless an innocent person is killed, it is not yet permissible to kill him, but it is permissible to hand him over to the tyrant, if he refuses to present himself, as Molina, Less, Layman, Lugo, Filliuc, Busemb, against Soto, etc., argue with good reason, because in that case, in order to avoid a common harm, he is bound to present himself,

and if he refuses to do so, he becomes guilty, and as a guilty person, he can be handed over by the state (3). 2. If someone, while riding, cannot escape death from an enemy pursuing him, unless the death of a child who is found in a narrow street, he may kill the child, provided the child is baptized; Sanch, Less, Lugo, Fill, Salm, Prado, and others generally agree (4). 3. It is permissible to direct war weapons towards enemy positions, even if innocent people are to suffer death; Less, Busemb, etc. (5).

Question IV. Is it permissible to cause an abortion? To deliberately procure an abortion is certainly always illicit, even if the fetus is inanimate; because if no one's life is harmed, at least nature and generation are harmed. And it should be noted that Sixtus V, in the bull Effrenatam, in addition to the penalties of deprivation of clerical privileges and benefices, and of being ineligible to receive them, imposed a papal excommunication, ipso facto and irregularity, on all those who knowingly procure an abortion (of a living or inanimate fetus), with cooperation, counsel, or favor. But later, Gregory XIV, in the bull Sedes apost. 1591, restricted this excommunication and irregularity to the abortion of a living fetus (6); and he gave bishops and others specially appointed by them the faculty of absolving from this excommunication; however, this does not exclude the possibility that others may also absolve from it, to whom the bishop grants a general faculty to absolve from all cases reserved to the Pope by the Pope himself, as Bonacina, Elbel, Sporer, etc., argue with good reason (7). Whether religious orders can absolve from it, see volume 3, treatise 20, number 100. But it should be noted: (1) Book 3, number 387. — (2) Number 598. — (3) Number 293. — (4) Ibid. — (5) Ibid. ad 4. — (6) Number 395. — (7) Number 397.

[*Latin ed. p. 197*]

OF THE KILLING OF ANOTHER. 185. It is stated in the bull of Sixtus V that those who, through crass ignorance, are the cause of an abortion do not incur excommunication and irregularity (1); see concerning censures. Note 2. There are various opinions concerning the time at which the fetus is to be considered animated (2); but the most common opinion is that animation occurs after 40 days from conception if the child is a male, and after 80 days if it is a female: so say Sylvest., Azor., Elbel, Busemb., and Salm. with St. Thomas (3), who extends this to 90 days for females; and this opinion, says the continuator Tournely (4), is held by almost all theologians, and he adds, with Navarro, Sylvio, that this is observed by the Sacred Penitentiary when dealing with penalties and irregularities. 23. But here, a doubt arises: 1. Do pregnant women incur excommunication if they procure an abortion? Many affirm, with Bonac., Viva, Spor., etc., on the basis of what is stated in the bull of Sixtus V (§5), and of the women themselves who knowingly take such potions. But it is highly probable, and more probable by reason, the opinion of D. Lug. Avila, Lezana, de Leone, Salmant., etc., which states that the aforementioned words of the bull are to be understood only concern-

ing temporal penalties, and not spiritual ones; and this is deduced from the following words in §7: "Therefore, we decree that all who, whether as principals or as accomplices, have given aid, counsel, or favor in such a crime, shall incur both temporal and spiritual penalties." And it appears that excommunication has been imposed only on the accomplices, but not on pregnant women, since they are not mentioned here, as they are in other penalties. Nor is excommunication imposed here on all who procure an abortion, but only on the principals or accomplices who provide assistance, counsel, or favor: which cannot be said of a woman, of whom it cannot be said that she provides herself with assistance, or counsel, etc. (5). 24. A second doubt arises: 2. Does one incur irregularity if he procured an abortion while in doubt as to whether the fetus was animated? Salm., Viva, affirm this, from Cap. Ad audientiam, de homic., and other similar texts, in which it is stated: "In doubt as to whether it pertains to homicide, it should be considered as irregular." But the opinion to the contrary, which is held by Præp. Giball., Maj., Pell., Marchant, Verde, Tamb., Elbel, Diana, Sporer, and other learned authors, with the author of the new Instr. pro Confess., seems certain to me. And the reason seems convincing, because, on the one hand, we have in cap. Is qui de sent. excom. irregularitatem non incurri, nisi in lege expressa sit. On the other hand, in our case, it is not expressed anywhere that this irregularity is incurred; for although some who were in doubt as to whether they were the cause of homicide were declared irregular in the aforementioned texts, it was certain that homicide had been committed; but in our case, since the animation of the fetus is doubtful, the homicide is also doubtful. Therefore, we are in a case in which no law expressly imposes an irregularity. Conversely, it must be said of those of whom it is doubtful whether their actions concurred in the abortion (6). If, however, one were in doubt only about the verbal concurrence, the mandate, or the counsel given, observe what is said about irregularity, vol. 2, tr. 19, n. 7. And what is said here about irregularity, should be said about excommunication. But with regard to irregularity, a dispensation must be obtained from no one but the Pope. As to whether a bishop can dispense with those who (1) Lib. 3. n. 395. — (2) N. 394. Quær. III. — (3) In 3. d. 3. q. 5. a. 2. — (4) Tr. de dec. c. 2. de 5. præc. art. 3. d. 1. — (5) Lib. 3. n. 395. Quær. 5. — (6) N. 396.

[*Latin ed. p. 198*]

186 TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE: Whether abortion is permissible in cases concerning the inability to administer ecclesiastical benefices? Elbel, Sporer, and Roncagl affirm this, contrary to Anacl. (1). See what was said in Tractate 2, nos. 58 and 25. — Question 3: (returning to the question proposed in Question 4) Whether it is permissible for a mother to take medicine directly to expel a lifeless fetus? On one hand, it is certain, by its very nature, that it is not permissible

(as stated at the beginning) to directly procure the expulsion of a fetus, even if it is lifeless (provided it is not certainly corrupted), for any reason whatsoever, even if the mother were otherwise in danger of death, or for the sake of relatives unjustly affected by her pregnancy, as the proposition 34 condemned by Innocent XI allowed, or because of the danger the mother has experienced in previous pregnancies, as Sanch., Azor, and Petrocorens commonly state. On the other hand, it is certain for all that it is permissible to administer a remedy to the mother directly to treat her illness, even if there is a risk of abortion, when the illness is mortal. Given this, many Doctors say that it is permissible in such a case to expel the fetus, which is certainly not alive, even directly, because (they say) the fetus is then considered an aggressor against the mother's life. Other Doctors, on the contrary, commonly deny this. But Busemb. rightly says here: What difference does it make to use the opinion of direct expulsion, when, according to everyone, the fetus can be expelled indirectly without fault (2)? 26. — Question 4: Whether it is permissible for a pregnant mother to take medicine directly to recover her health, but with the risk to the child? Since it is morally certain that if the mother dies, the child also dies, there is no doubt that this is permissible. The difficulty arises when there is some hope that the child may survive and be baptized if the mother dies. Holzm., Prado, and the theologians of Salamanca also allow this in such a case, saying that the obligation to preserve temporal life arises in order to procure eternal life for the neighbor, but only when the neighbor's spiritual salvation is certain, not when it is doubtful. But I do not know how to agree with this opinion, because it is one thing to expose oneself to death to obtain the neighbor's salvation, and this gives place to the rule of the opponents (namely, that the neighbor's salvation must be certain); it is another thing to positively expose the neighbor to the danger of eternal death in order to defend one's own life; since the danger of death is equal for both mother and child without baptism, it seems to me that, considering the order of charity, the danger to the child should be avoided more than the danger to the mother. Therefore, I believe that, as Petrocorens, Elbel, and Tournely (who, citing Silv. Comitolum and Habert, call this a common opinion) state, it is permissible to administer medicine to the mother with the risk to a living fetus only in that single case in which there is no reasonable hope of the child's life, so that it may be baptized after the mother's death, for then, and only then, does charity not seem to obligate the mother (in extreme necessity) to abstain from medicine, because of the remotest hope that there might be of the child's life. Therefore, the theologians of Salamanca say that doctors should not be so scrupulous in administering medicines to pregnant women, because it is a very rare case, indeed, morally impossible, as Sanch., Lugo, and Ronc. believe, that if the mother dies, the child will survive. And this has been confirmed by several learned doctors whom I consulted on this matter: for when the mother suffers from a mortal illness,

the humors are corrupted, and the nourishment of the child is contaminated; and therefore the child dies, probably (1) Book 3, no. 395, see above. — (2) No. 394, see above. Therefore, I ask. 1.

[*Latin ed. p. 199*]

OF DUELS. 187. Sometimes, and perhaps even previously, the mother dies (1). Nevertheless, it has come to my attention more than once that, due to the skill of surgeons, immediately after the mother has breathed her last, the fetus, having been extracted by an incision into the mother's womb, has been found alive and baptized. However, it will not be permissible to incise the mother if there is a probable risk of her death, in order that the fetus may be baptized, even if she consents to it. If, however, the risk to the mother were remote due to the skill of the surgeon, then it might be permissible to make the incision, and she would be obliged to endure it. Whether, however, a child can be brought to baptism through such an incision without a grave risk to the mother, let experienced physicians determine; for this seems difficult to me (2).

CHAPTER III. OF DUELS AND WAR.

27. Point I. Of Duels. Propositions condemned by Benedict XIV.—28. When a duel will be licit. Penalties for those who engage in duels.—29. Point II. Of War. Whether it is permissible to wage war with a probable opinion.—30. Whether it is permissible to call enemies of the faith to one's aid.—31. Whether a soldier can wage war in a doubt of justice.—32. What actions are permissible in war.

POINT I. OF DUELS. 27. A DUEL is a fight between two or more people, agreed upon beforehand regarding the place, day, and weapons. A duel is not licit either to investigate the truth, or to settle disputes, or to clear oneself of an alleged crime, and much less to demonstrate timidity (as was permitted by proposition 2, condemned by Alexander VII), or to avoid shame, even if it were only apparently done; this must be understood in common dealings with others. And here are five propositions most recently condemned by Benedict XIV in the year 1752, in the bull *Detestabilem*, and they are as follows:

« I. A soldier who offers a duel, or accepts it, as a timid, cowardly, and inept person, unfit for military service, should be considered such, and should be deprived of the office by which he supports himself and others, or should be perpetually denied the hope of promotion that is due to him and deserved by him, and should incur guilt and punishment, whether he offers or accepts the duel.

II. Those who accept a duel, or provoke it, for the sake of defending their honor or avoiding human contempt, can be excused, when they certainly know that the fight will not take place, as it will be prevented by others.

III. Those who engage in duels do not incur ecclesiastical penalties if a commander or military official accepts a duel out of a grave fear of losing his reputation or office.

IV. It is permissible, in the natural order of things, to accept and offer a duel in order to preserve fortunes with honor, when there is no other remedy to prevent their loss.

V. The asserted permission for the natural order can also be applied to the state of a badly ordered society, in which, namely, through negligence or malice of magistrates, justice is openly denied. »

28. A duel will only be licit in two cases. I. To end a common and just war with the least possible damage; or, as some say, to preserve the honor of an army oppressed by enemies. II. If the enemy is determined to kill you, and, through his audacity, offers you weapons to defend yourself; for then your fight is a true defense, provided that (1) Book 3, n. 394, v. Question 2. — (2) Book 6, n. 106, v. Absolutely.

[*Latin ed. p. 200*]

TRACTATE VIII. ON THE FIFTH PRECEPT OF THE DECALOGUE: One cannot escape the struggle (1). There are three penalties imposed by the Council of Trent (Session 25, Canon 19) upon those who engage in duels: 1. Infamy, accompanied by the confiscation of property; 2. Deprivation of ecclesiastical burial for those who die in the conflict, even if they have received the sacraments before death, as stated in the aforementioned bull; 3. Papal excommunication, incurred by the very act, both by the duelists themselves, and by those who give them counsel (provided the counsel is effective, as noted by Elbel), and also by those who provide support or a location, and even by spectators; not, however, by those who happen to be present there, but by those who actively participate, as explained by Gregory XIII in the bull *Ad tollendum*, saying, "from the assembled spectators"; indeed, Tournhem, Salamanca, Elbel, and others commonly add that only the direct associates of the duelists, or those whose presence incites them to fight, are included (2). Therefore, the following should be noted: 1. These penalties and excommunication are not incurred unless the duel is strictly accepted, that is, premeditated (as stated), with the designation of a place, time, and weapons (even if otherwise it is carried out without sponsors, as declared by Gregory XIII in the aforementioned bull); otherwise, if the fight occurs unexpectedly, even if the gladiators move to a more suitable location due to the impulse of the quarrel, as commonly held by the Doctors (3). 2. Although the words of the Council seem to require that the duel be premeditated, nevertheless, according to the bull of Clement VIII, *Illius vices*, even if the duel does not follow, both the principal parties and all those who cooperate incur excommunication (4). Note 3. If the duel is not notorious and has not been brought before a court, bishops can

absolve from the aforementioned excommunication, according to chapter 6, *Liceat*, of the Council of Trent, Session 24, but not already regular clergy, except in Rome, and outside of Italy (5).

SECTION II. ON WAR. 29. Three conditions are required for a war to be just: the authority of the supreme ruler; a righteous intention for the common good; and a just and serious cause.

It is questioned: 1. Whether it is permissible to wage war with only a probable opinion? There are three opinions. The first affirms, with Azor, Sanchez, Filliuc, etc., saying that just as it is permitted for private individuals to initiate a lawsuit with only a probable opinion, so too should it be granted to rulers to wage war, at least to obtain a part of the kingdom that is contested, when there is no supreme judge who can decide this dispute. The second, with Bann, Prado, and Ledesma, requires at least a more probable opinion, because, just as a judge must award the matter to a private individual, even if he is not in possession of the thing, so a ruler, when there is no competent judge, can wage war to obtain what he claims. The third opinion teaches that war cannot be waged unless it is certain that he has a right to it; for, according to the general rule (as stated in Tractate 1, no. 18), a person who holds property in good faith cannot be deprived of it, unless it is certain that he is unjustly retaining it; thus, speaking of war, Castrop, Laym, Holzm, Vasquez, Salmeron, Montesin, Villalobos, and Salamanca hold this opinion with certainty; and Tamburini holds the opposite opinion as improbable. This third opinion, considered in its intrinsic reason, seems to me to be far more probable. Furthermore, Roncaglia and Salamanca state that war, regularly, is the cause of so much damage to religion and so many crimes (1).

(1) Lib. 3, no. 400.

(2) No. 401.

(3) Ibid.

(4) L. 7, no. 220.

(5) Ibid. Note 5.

[*Latin ed. p. 201*]

OF WAR. 189. It may, at least in practice, be very difficult to see how it can be just to wage war without a certain right against a kingdom which is held by another prince (1). 30. It is asked: 2. Whether it is permissible for a Catholic prince, in a just war, to enlist infidels or heretics to aid him? Some absolutely deny it; others absolutely affirm it; still others, including the common opinion of St. Antoninus, Suarez, Sylvestri, Bonaventure, Castropus, Concinius, Busembach, etc., say that the second opinion is probable, and that no harm will ever result to religion; but because, in practice, the first is unavoidable, we say, with Molin, Sporer, Salamanca, Diana, etc., that the first should always be followed in practice (2). 31. It is asked: 3. Can

a soldier wage war when there is doubt about the justice of the war? A distinction must be made: if he is a subject, he can, and indeed is obligated, as the Doctors commonly say, from that famous passage of St. Augustine, quoted in canon "Quid culpatur," Dist. 23, q. 1, where it is said that a soldier can justly fight as long as he is not certain that the war is unjust: "If it is not certain (contrary to the precept of God)," are the words of the Father. The reason is that a subject is bound to obey where there is no certain sin, as we said in treatise 1, n. 18. But one who is not a subject cannot enter military service unless he is certain of its justice, because no one can cooperate in depriving someone of property which they possess, unless he is certain that they unjustly possess it. And the same must be said of soldiers hired for wages, provided they were hired before the outbreak of war (3). It should be noted here that soldiers sin who desert from the army, either when all hope of victory has not yet been lost, or who leave the camps without a just cause (4). 32. It is asked: 4. What actions are permissible in a just war? 1. It is permissible to kill enemies, and to seize their property. However, it is not permissible to directly kill the innocent; but it is permissible to deprive them of their property, if they are part of the hostile republic, and victory cannot be obtained in any other way, as Molin, Bellarmine, Laym, etc., say. However, ecclesiastical property should be restored, if it still exists (5). 2. It is permissible to demolish churches if the enemies use them for defense. 3. It is permissible to use ambushes and stratagems; but it is not permissible to poison wells or to do anything else that cannot be avoided with prudence. 4. In some cases, but rarely and only for the most urgent reason, it may be ordered by a leader that a city be destroyed, as Laym, Filliucca, and Sa say, etc. 5. It is permissible for captives in war to always flee, and they may. 6. It is permissible to damage the property of the enemy (which is called reprisal), provided there is a command from the prince, and it is established that an injury has been inflicted by citizens of the hostile republic, and that the just compensation is not exceeded (6). Of the goods seized in war, immovable property belongs to the prince, while movable property belongs to those who seize it, unless custom dictates otherwise (7).

(1) Book 3, n. 406.

(2) Ibid., n. 406.

(3) N. 468, v. Quaer.

(4) N. 410.

(5) N. 409.

(6) Book 3, n. 410.

(7) N. 411.

[*Latin ed. p. 202*]

TRACTATE IX. CONCERNING THE SIXTH PRECEPT OF THE DECALOGUE.

POINT I. CONCERNING TURPIDE TOUCHES, SIGHTS, AND WORDS.

1 and 2. Whether there is any mitigation of sin in carnal or sensual delight.

— 3. Concerning touches.

— 4. Concerning dances.

— 5. Concerning a woman permitting herself to be touched.

— 6. Whether a girl who is assaulted is obliged to cry out.

— 7. Whether she can ever permit her violation.

— 8. Concerning sights.

— 9. Concerning words.

— 10. Concerning those who hear turpide words.

1. SIN against this precept is the most common matter in confessions, and it is a vice which fills hell with souls; therefore, let us discuss this precept more fully. We warn that these things should only be read by confessors, or by those priests who desire to prepare themselves to hear confessions; indeed, we implore these to not read this, or any other book on this subject (which, by its very reading, corrupts the mind), except after all other treatises, and when they are about to administer the Sacrament of Holy Penance.

2. First of all, it must be understood that in matters of luxury (whatever some may say about a slight touching of a woman's hand, or a twisting of a finger), there is no mitigation of sin; so that every carnal delight, taken with full awareness and consent, is a mortal sin. Hence, Pope Alexander VII condemned proposition 40, which stated that a kiss taken for carnal and sensual delight, which arises from the kiss, is not a mortal sin. And so, too, the opinion of those who admit of a mitigation of sin in sensual delight must be rejected, namely, if a man is delighted by the touch of a woman's hand, as if by the touch of silk; because in this case, there is at least the near danger of falling into carnal delight (1). However, the continuator of Tournely (2) rightly distinguishes between acting for the sake of delight, and acting with some natural delight, which arises from the qualities attached to the body; because in the latter case, a mitigation of sin may indeed be possible, for example, in a doctor who, out of necessity, touches a woman:

provided (it must be added) that he does not linger in such a delight, but detests it while touching; otherwise, he is already acting for the sake of delight, which, although it may be natural, is nevertheless (as we have said) not separated from the near danger of passing into the carnal, if it is sought deliberately. With these things established, let us proceed to speak of the individual species of luxury. 1. Those that are not consummated; 2. those that are consummated naturally; 3. those that are consummated against nature.

3. And I. Concerning touches. Outside of marriage, all touches, kisses, and embraces exercised for carnal delight are mortal sins; for they are all of the same nature as the consummated act; therefore, it must be explained in confession whether they were taken with the same sex, or with a different sex, and whether with a married person, or a consecrated person. And so, too, the touch of the proper genitals is mortal, especially when it stirs the passions, unless it is done out of necessity.

(1) Book 3, nos. 415, and 416.

(2) Tractate on the Decalogue, chapter 3, on the 6th precept, article 9.

[*Latin ed. p. 203*]

DE TOUCHES, REGARDS, ETC. 191. La nécessité peut excuser un contact; mais si celui-ci est motivé par la curiosité ou la légèreté, il ne peut être qu'un péché véniel, à condition qu'il soit bref, sans délai, et sans trouble de l'esprit, sans scandale, ni danger de délices. Cependant, le toucher le corps d'une autre personne, surtout si elle est nue, et encore plus si elle est du sexe opposé, est rarement excusable devant Dieu, sauf si cela est absolument nécessaire. Il faut cependant faire exception pour les cas où cela est nécessaire, par exemple, pour un chirurgien, à condition qu'il ne consente pas lui-même à des délices. De même, toucher les parties génitales d'animaux est de lui-même mortel, mais ce toucher, jusqu'à la pollution, n'est pas excusable devant Dieu, selon Bonaventure, Holzmüller, et d'autres, contrairement à certains.

4. Les danses, si elles sont pratiquées par des laïcs, et si elles sont honnêtes, sans gestes impudiques ni dangereux, ne sont pas en elles-mêmes illicites, comme l'affirme le bienheureux Thomas d'Aquin avec d'autres.

5. Une femme ou une jeune fille ne péche pas si elle permet d'être touchée pudiquement, selon la coutume, sauf si elle sait que celui qui la touche a de mauvaises intentions, et si elle peut résister sans nuire à sa réputation ou causer un scandale aux autres, comme l'enseignent Cajetan, Azorín, Sahagún, Bonaventure, Busembach, et d'autres. Elle péche, en revanche, si elle ne s'oppose pas aux touches impudiques, ou aux baisers lascifs ou furtifs.

6. Il est donc douteux si une jeune fille opprimée est tenue de crier si cela est nécessaire pour se libérer d'une injustice? Certains, comme Navarre,

Soto, Bonaventure, et d'autres, affirment qu'elle est excusée si elle résiste de toutes les manières possibles, et si crier lui permet d'éviter le danger d'être déshonorée, à moins qu'elle ne soit en danger de consentir. Ils ne citent pas le passage de Deutéronome 22:24, où la jeune fille est condamnée parce qu'elle n'a pas crié, car, selon eux, cette loi concernait un jugement extérieur, où l'on supposait que la jeune fille qui ne criait pas consentait. D'autres, comme Cajetan et Salm, avec d'autres, affirment que cette opinion est à préférer, bien qu'elle ne soit pas à condamner, surtout si le danger de consentement est imminent (4).

7. Il est douteux si une femme est tenue de subir la mort en repoussant un agresseur, plutôt que de permettre sa violation? Toletus, Soto, Navarre, Holzman, et d'autres, le nient, à condition qu'elle résiste de sa propre volonté, et qu'il n'y ait aucun danger de consentement. Mais cette opinion ne semble pas probable dans la pratique, car une femme, en restant dans une telle situation, aura très certainement du mal à éviter le danger de consentir (5). Quant aux touches entre conjoints ou fiancés, ou à la manière dont elles sont permises, voir ce qui est dit sur le mariage, tome 2, traité 18, n. 42.

8. II. Concernant les regards. Regarder une personne du sexe opposé est rarement excusable devant Dieu, sauf peut-être si le regard est jeté de très loin, et de manière fugitive, de sorte qu'il n'y ait aucun danger de délices. De même, même en parlant de personnes du même sexe, je ne considérerais pas qu'un homme regarde lascivement et avec plaisir une jeune fille nue est excusable. Je suis d'avis, avec La Croix (quoi que disent les Salamanquesins), qu'un simple regard impur, sans désir de toucher, ne crée jamais l'image de la personne qui est regardée, c'est-à-dire, ne crée pas l'image d'un parent, d'une personne sacrée, ou d'un conjoint; car l'image de l'inceste, de la sacrilège, ou de l'adultère ne se produit que par le toucher, qui viole la piété ou le droit conjugal (6). Regarder un acte conjugal humain est sans aucun doute mortel; mais regarder des animaux est très dangereux; par conséquent, cela ne doit être permis qu'à ceux à qui cela est nécessaire pour l'accomplissement de leur fonction (1).

(1) Livre 5, pages 417 à 422.

(2) N. 429.

(3) N. 450.

(4) Ibid., voir "Utrum".

(5) N. 568.

(6) Ibid., page 451.

[*Latin ed. p. 204*]

TRACTATE IX. CONCERNING THE SIXTH PRECEPT OF THE DECALOGUE.

192. Malice may be joined to generation; provided that there is no danger of consenting to wickedness in themselves (1). To gaze upon the less honorable parts of a woman, but not shameful parts, namely, the arms, legs, or breasts, is not always in itself mortal; but if the gaze is deliberate and prolonged, or if the one gazing is inclined to lust, it is very difficult to excuse such an act from being mortal: and I feel the same about one who gazes upon the face of a beautiful woman with a morose expression, especially if he loves her with an inordinate affection (2). The authors say that to gaze upon obscene pictures merely out of curiosity is not mortal, if there is no danger of wicked delectation; but I do not know how one who gazes morosely upon the female genitals depicted, whether nude or covered by a light veil, can be excused from a mortal sin (3). Those who paint or exhibit such images commit a very grave sin of scandal, since they greatly incite young people to licentiousness (4). And I think the same should be said of those who keep such images exposed in their homes for all to see.

9. – III. Concerning Words. Obscene words are not mortal, if they are uttered out of anger or jest, as is often the case with reapers, vintners, and millers. However, if the words are excessively lascivious, or if they are uttered with the delectation of wicked things, or with the scandal of those who hear them, which is very often the case when such words are spoken in the presence of young girls or boys, and especially if someone boasts of some wicked sin; in which case the one boasting ordinarily sins threefold: 1. because he glories in a bad thing; 2. because he gives great scandal; 3. because he easily pleases himself with the sin committed (5). Furthermore, it should be diligently noted, as Salm. and Roncagl. from D. Thom., that it is a very grave danger to have a prolonged conversation with a young girl whom one loves inordinately (6).

10. – Those who hear obscene words, or obscene comedies, merely out of curiosity, or for a vain amusement, may sometimes be excused from a mortal sin, unless there is wicked delectation, or the danger thereof, which is almost always present in young people, or in those with a conscience that is little afraid (7), or unless there is scandal: and therefore, Benedict XIV (8) rightly teaches that clerics and religious cannot attend obscene comedies without grave scandal. And it is also rightly that Holzman and La-Croix, because of the scandal of others, condemn as mortal those who contribute with money or applause to such notably obscene comedies; and those who are obligated to prevent them, or who can conveniently do so, and do not prevent them; and even more so those who represent them (9). Those who compose books that incite to wickedness, or to dishonorable loves, also sin very gravely (10). Thus far, concerning acts of luxury that are not consummated; now let us consider the species of consummated wickedness.

POINT II. CONCERNING CONSUMMATED ACTS OF NATURAL WICKEDNESS.

11. Concerning Fornication.

12. Whether prostitutes are to be tolerated.

13. Whether the fornication of betrothed persons is of a different species.

14. Concerning Rape.

15. Concerning Abduction.

16. Concerning Adultery.

17 and 18. Concerning Incest.

19. If those who have been dispensed are united, etc.

20 to 23. Concerning Sacrilege.

11. – I. Concerning Fornication. Fornication is carnal intercourse between those who are not bound by marriage by mutual consent (1). Concubinage is nothing other than continued fornication (1).

(1) Lib. 3. n. 419.

(2) N. 422. et 423.

(3) N. 424.

(4) N. 429. v. Exhibentes.

(5) N. 426.

(6) N. 422. in fin.

(7) N. 426 et 427.

(8) De Synodo l. 11. c. 10.

(9) Lib. 3. n. 427. et 428.

(10) Ibid.

[*Latin ed. p. 205*]

OF DETESTABLE ACTS, etc. 193, concerning living together maritally, either in the same house or another. When concubinage may or may not be permitted, and when those in such a state may or may not be absolved, see what is said below concerning those in the proximate occasion, volume 3, treatise final, point 1. Concerning the penalties for concubinage, and especially for clerics, see (1). 12. — Here, it is doubted 1. whether prostitutes are to be permitted? Some affirm, according to St. Thomas, that otherwise, more grievous crimes would occur. But it is more probable that Navarrus, Roncaglia, Guttierez, and others deny this; because, by permitting prostitutes, countless sins are already committed, and, on the contrary, more grievous evils are not avoided. Furthermore, it must be diligently noted that, even if prostitutes may be permitted in large cities, they are never to be permitted in small towns or cities (2). 13. — It is doubted 2. whether fornication between betrothed persons takes on a different aspect of sin? Some affirm this for both betrothed persons; others only for the

betrothed woman; others, however, quite probably deny this, as do Pontius, Sanchius, Laym, Lugo, Salm, Trullenchus, Covar, Led, Elbel, etc.; because each betrothed person, although obligated to enter into marriage, does not grant the other any right over his or her body, so that neither can use the other at his or her own discretion without the other's injury (3). 14. — II. Concerning rape. Rape is the defloration of a virgin against her will, and therefore, besides the wickedness of fornication, it also has the injustice of violence. But is there a special sin if the virgin consents? Navarrus and Azor, among others, affirm this, but Lessius, Sanchius, Bonacius, Busembus, Salm, Barbosa, and others, more commonly deny it. However, it may be of a different species in other respects, namely, because of the disgrace to the family, the grief of the parents, or quarrels (4). Concerning what the perpetrator of rape is subject to, see what is said in chapter 7, treatise 10, from number 91 and following. 15. — III. Concerning abduction. Abduction is committed when a woman or man is taken away for the purpose of illicit relations, by force, either of the person himself, or of those to whom that person is subject, namely, parents or guardians (5). Concerning what the abductor is subject to, see concerning marriage, volume 2, treatise 18, number 76 and following. 16. — IV. Concerning adultery. Adultery is the act of sexual intercourse with a married person, and it is a special sin of injustice, even if the husband consents, as is clear from proposition 50, condemned by Innocent XI, because, through adultery, an injury is inflicted not only upon the husband, but also upon the offspring and the human race. Therefore, Lugo and Lessius (6) hold that in adultery, where the husband dissents, there are two injustices; but Viva (7), along with Cajetan and Turrianus, holds that there is only one injustice, namely, against the good of the generation, because, through adultery, an injury is inflicted upon the husband not as a private person, but as a husband; and therefore, it is incumbent upon him to consider the good of the offspring, to which he cannot yield, just as no one can consent to have a member of his body taken away by another. He who knows his wife sodomistically commits adultery, according to common opinion, and he must acknowledge that he has committed a heinous sin with his own wife (8). Concerning what adulterers are subject to, if offspring is born from adultery, see concerning the rest, treatise 10, number 101. 17. — V. Concerning incest. Incest is the intercourse with a blood relative or an affine, from intercourse that is licit up to the fourth degree of consanguinity, from illicit intercourse up to the second degree. Here, it is doubted 1. whether incest with a blood relative differs in species from incest with an affine? Lessius, Salm, and Roncaglia, among others, probably affirm this (1). — (2) Number 434. — (3) Number 447; and l. 6, number 847. — (4) Number 443. — (5) Number 444. — (6) Lugo de pænit. D. 16, number 218, and Lessius, l. 2, c. 7, dub. 3. — (7) In

proposition 50, condemned by Innocent XI, number 10. — (8) Number 446.

[*Latin ed. p. 206*]

194 TRACT. IX. ON THE SIXTH PRECEPT OF THE DECALOGUE. Adultery, etc., because in consanguinity there is a bond arising from the identity of blood, whereas in affinity there is a bond arising from marriage; hence, a certain difference appears. Others, however, such as Soto, Cajetan, Sanchez, Lugo, etc., more plausibly deny this, because both incestuous acts are forbidden for the same reason of piety; and St. Thomas (1) agrees, saying: "Consanguinity and affinity create the same inconvenience." However, all incestuous acts between relatives are of the same species, except for the incest between a stepfather and stepdaughter, and between a father-in-law and daughter-in-law (2). 18.—It is doubted whether all incestuous acts with blood relatives are of the same species? There are three opinions, all of which are plausible. The first, held by Cajetan, Pontius, Soto, Navarr, Castrop, etc., affirms that, except for the first degree in the direct line, all other degrees constitute a different species of incest, because (they say) conjugal intercourse between other blood relatives is only forbidden by the Church, and not by natural law, which establishes specific differences. The second opinion, held by Suarez, Pasquius, Laym, etc., maintains that all degrees up to the fourth constitute a different species of incest, because greater reverence is due to a closer degree than to a more distant one. The third opinion, held by Lessius, Lugo, Sanchez, Roncaglia, etc., states that only the first degree, both in the direct and collateral line, constitutes a different species; because they believe that intercourse between siblings is forbidden by nature itself (3). However, it is certain that incestuous acts between spiritual relatives (by reason of adoption) are of a different species than those between blood relatives and affines (4). 19.—It is doubted whether relatives who have obtained and executed a dispensation for marriage commit incest if they fornicate before the marriage? There are two plausible opinions. Some more commonly deny this, such as Sanchez, Lugo, Cajetan, Armilla, and Vega; because, once the prohibition of marriage is removed, the reason for incest ceases. Others, however, such as Major and Gallego, affirm this, because the impediment of consanguinity is removed only for the purpose of contracting marriage, but not for the purpose of fornicating (5). 20.—VI. On sacrilege. Sacrilege is committed when sacred things are violated by a carnal act. Therefore, sacrilege can be committed concerning a person, a place, and a thing. And I. Concerning a person, it is committed if someone sins while having a vow of chastity, or with someone who has such a vow. Therefore, a priest who sins with another consecrated person commits a double sacrilege. On the other hand, a religious person who is also a priest, by violating chastity, more plausibly commits a single sacrilege, because a priest is more plausibly bound to chastity by reason of the vow attached to

the sacred order (as we will say in the examination of orders, no. 59); and because such a person, even if bound to chastity by the mere precept of the Church, would still sin against religion, since the Church commands chastity for the sake of religion (6). A priest, however, who, by his own counsel, induces a lay person to fornicate, commits sacrilege if he does so out of a desire for lust; otherwise, if he does so for some other wicked purpose (7). 21.—II. Concerning a place, sacrilege is committed by one who fornicates in a sacred place, namely, within a church or a cemetery, but not in the atrium of a church, a monastery, or a private oratory not blessed by a bishop (8). It is doubted here 1. Whether marital intercourse, or intercourse hidden within a church, is sacrilegious? There are three plausible opinions. Some deny it in the case of marital intercourse, such as Alensis, Pontius, Sa, etc. Others deny it in the case of intercourse hidden within the church, as the same (1) a. 2. q. 1554. art. 9. — (2) Lib. 6. n. 496. — (3) N. 470. — (4) Lib. 5. n. 450. — (5) N. 482. — (6) N. 484. ad 466. — (7) N. 457. — (8) N. 496.

[*Latin ed. p. 207*]

OF DETESTABLE ACTS, etc. 195. Pontius, Tolet, Vasquez, Azor, etc. Others, however, more commonly and with greater probability, assert that both acts are sinful, because irreverence is shown to the Church by both, and the Church is defiled; although, if the sin is concealed, there is no obligation to abstain from divine services; thus, Suarez, Sanchez, Lessius, Holzman, Croix, Bonaventure, Salmant, etc. Nevertheless, these same authors justly excuse spouses who are compelled to enter the church out of moral necessity, such as if they are in danger of incontinence, or if they must remain in the church for a long time. As for how long is meant by "a long time," some say ten days; others, more probably, a month, or at least twenty days. But if spouses judge that they will remain in the church for a month, Sanchez, Salmant, and others advise that they may, from the beginning, engage in conjugal relations (1). 22. — It is doubted whether all external acts of impurity committed in the church constitute sacrilege, namely, touches, glances, or words. Cajetan, Navarrus, Bonaventure, etc., deny this, because the Church is defiled only by the shedding of seed. But Suarez, Sanchez, Molina, Salmant, etc., more probably assert that these acts do constitute sacrilege, because, although the Church may not be defiled by these acts, irreverence is nevertheless shown thereby. Internal acts, or thoughts, however, are not sacrilegious, unless they concern committing a sin externally in the church (2). 23. — III. He commits sacrilege who abuses sacred things for impure purposes. The same is to be said of a priest who commits an impure act while wearing vestments for Mass, or while carrying the Eucharist, or immediately after Communion, for example, within an hour (3). We have spoken of natural and impure acts; now we speak of those which are against nature. POINT III. OF DETESTABLE

ACTS COMMITTED AGAINST NATURE. 24, 25, 26. Concerning sodomy. — 27. Concerning bestiality. — 28. Concerning intercourse with a demon. — 29. Concerning pollution. — 30. Concerning distillation. — 31. Whether it is permissible to expel corrupted seed. — 32. Whether we are obliged to prevent involuntary pollution. — 33. Whether we should avoid all causes of pollution. — 34. What if the actions are done for a just cause? 24. — And I. Concerning sodomy. Sodomy has a special deformity. It is doubted among the Doctors in what it consists. Some hold that it consists in intercourse with an improper vessel; others, more commonly and with greater probability, with St. Thomas, in intercourse with an improper sex. Hence, it follows that 1. the intercourse of a woman with a woman, and of a man with a man, is perfect sodomy, wherever the contact is made on the body, because there is ordinarily always present the inclination towards an improper sex; therefore, it is not necessary to explain in confession whether the pollution was internal or external, although the shedding of seed within the proper vessel is required to incur the sin, as says Father Mazzotta (4). I believe, however, that in sodomy, everything should be explained in confession, whatever Salmant may say, namely, who was the actor and who the recipient; because the recipient is not always defiled as the actor, as Salmant does not rightly suppose (5). Indeed, it should be explained if the sodomy was committed by force, or with a spouse, or with someone who has taken a vow of chastity (6). 25. — It follows that 2. the intercourse of a man with a woman in the woman's improper vessel is an imperfect sodomy, distinct in species from perfect sodomy. But if someone were to pollute himself between a woman's legs or arms, he would commit two different sins: one, the beginning of fornication, the other, against nature. Whether pollution in the mouth is (1) Lib. 3, n. 458. — (2) N. 459 to 462. — (3) N. 463. — (4) Mazzotta, vol. 3, p. 519, on reserved cases. — (5) See our work, lib. 3, n. 465. — (6) N. 465, at the end.

[*Latin ed. p. 208*]

TRACTATE IX. ON THE SIXTH PRECEPTS OF THE DECALOGUE: Are there different kinds? Some affirm that this is the sin of "irruption," stating that it is always a pollution in a vessel other than the natural one, and changes its nature. However, it is more probable, according to Cajetan, Filliuc, Holzman, Graffus, etc., that if the pollution is of a man in the mouth of a woman, it is sodomy; if in the mouth of a man, it is begun fornication, and furthermore, a sin against nature, as we will soon say. But coitus with a dead woman is not bestiality, as some say, but is a pollution; and furthermore, it is affective fornication. Moreover, pollution obtained by touching a sleeping boy or woman, without, however, intercourse or conjunction of bodies, has only the malice of simple pollution, as it is more probable, according to Salm, Cajetan, Azor, Bonac, etc. Also, he who pollutes himself with the touch of another sins doubly by cooperating in the sin of another;

he is not, however, obliged to explain whether the touch was of a man or a woman; unless that woman has a husband, or a vow of chastity. Furthermore, it is more probable, according to Lugo, Sylv, Salm, Ronc, Croix, etc., against some, that both sodomy and all impudent touches between relatives or affines, or spiritual or legal kinsmen, incur the malice of incest, since they have the same deformity as the consummated act.

26. Regarding the penalties for sodomites, if they are laymen, they are condemned to death and burning. Clerics and religious, however, by the bull of Pope Pius V, issued on August 30, 1568, "Horrendum," are deprived of all clerical office, benefits, and privileges; provided that (as the Doctors teach), sodomy 1. is with another man, not a woman or a beast; 2. is perfect, with pollution within the vessel; 3. is frequent, as it is said in the bull, that they are exercising sodomy. It is more probable that these penalties are also incurred by the patient, as say Bonac, Salmant, Diana, and Barbosa, against others, as long as the patient is truly a sodomite. On the contrary, it is more probable and commonly taught by Suar, Navarr, Bonac, Barbosa, Less, Filliuc, Trull, Salm, etc. (against Azor, Dicast, etc.), that these penalties are not incurred except after a sentence, although it is said in the bull: "We deprive you by the authority of this canon"; because, as we said in tractate 2, no. 25, no penalty depriving one of a lawfully acquired right is incurred except after a sentence, at least a declaratory one.

27. II. Of bestiality. Bestiality is coitus with a beast; and it is more detestable than sodomy. It is not necessary to explain whether the beast was male or female, as the Doctors commonly teach against a few, because the entire deformity of this crime lies in the approach to a different species.

28. Coitus with a succubus or incubus demon, as commonly held by Azor, Cajetan, Bonac, Filliuc, Salmant, Bus, etc., is reduced to the sin of bestiality, with the added malice of a sin against religion; and also of affective fornication, or sodomy, if the demon appears in the form of a boy or a woman; and also of adultery, or incest, if one is delighted by coitus with a demon as if with a spouse or partner, according to what we said about lascivious delight, tractate 3, no. 48.

29. III. Of pollution. Pollution is the effusion of semen without intercourse with another; and it is forbidden by natural law, as is clear from proposition 49, and condemned by Innocent XI. Therefore, it is a more grievous sin than fornication, because it is against nature. To pollution is added the malice of sacrilege if it is committed by one who has a vow of chastity; of adultery, if by a married person; also of fornication if one delights in polluting oneself as if in coitus with a woman, or of sodomy if one thinks of coitus with a boy.

(1) Lib. 3, no. 466.

(2) No. 467.

(3) No. 469.

(4) No. 470 to 473.
(5) No. 474.
(6) No. 474.
(7) No. 476.

[*Latin ed. p. 209*]

OF DETESTABLE ACTS, etc. 197 30. — It is questioned: 1. Whether voluntary distillation, that is, the flow of humors between urine and semen, constitutes a mortal sin? Answer: If it occurs with some venereal pleasure, or with a disturbance of the spirit, it will be mortal if it is not avoided, just as pollution must be avoided. However, if it occurs without sensation and disturbance, it may be permitted as the emission of another excrement, as commonly taught by Cajetan, Bona, Sayr, Busemb, Holzm, Salm, Sporer, Elbel, etc. We have said it may be permitted, but it must never be sought after, as rightly point out Sanchez and Bonac (1). 31. — It is questioned whether it is permissible to expel corrupted semen with medicines (since it is never permissible by touch)? Salmant and Roncagl deny this, but Laym, Sanchez, Bona, Anacl, Sporer, Croix, among others, commonly affirm it, provided that the expulsion can be done without venereal sensation, and provided that the semen is certainly corrupted, and cannot otherwise be expelled (2). 32. — It is questioned 3. Whether there is an obligation to prevent a pollution that is beginning to occur spontaneously, such as if it begins in sleep and is completed while awake? The authors commonly deny this, provided that there is no consent to pleasure, or any proximate danger from past experience; thus Sanchez, Conc, Navar, Azor, Salmant, Holzm, Sporer, Trull, etc., because it is very difficult to restrain it once it has begun; and because a man is not obligated to prevent it if there is a danger of illness from the corruption of the semen: in such a case, he does not will it, but allows it. However, it is wisely noted by Gerson that a man should always strive to prevent it as much as possible; at least (according to Sanchez), he should always take care to protect himself at that time with the sign of the cross, and turn his mind away from that pleasure, invoking the names of SS. Jesus and Mary, so that he may not fall into sin. It should be noted that if a person is in a semi-vigilant state, and is pleased by the pollution that has begun, he is not to be considered guilty of a mortal sin, since full awareness and perfect consent are absolutely required for a mortal sin (according to the statements in tract. 3, n. 24 to 39), which a person who is half-asleep certainly lacks, and therefore does not have perfectly free and unhindered use of reason (3). 33. — It is questioned 4. Whether there is an obligation to avoid all causes that influence pollution? Answer: If the causes are very influential, as are those that are gravely culpable in matters of luxury, namely, touches, or immodest sights, or lascivious pleasures, and the like, then a man is undoubtedly obligated to avoid them; otherwise, the pollution, even if foreseen but not intended, is

imputed to him as a sin. The same should be said of a pollution caused by a long conversation with a girl who is unduly loved, or arising from an action that, although not mortal in itself, would be so with respect to someone who has been accustomed to consent to such pollutions (4). 34. — However, it should be noted that if the aforementioned influential actions are undertaken for a necessary or useful cause, and there is no danger of consent, then the pollution that arises from them is not imputed as a sin, as all teach. Hence, even with foreseen pollution (understand always involuntary), it is permissible to hear confessions, and to read treatises on shameful things, as well as for surgeons to examine and touch the parts of a sick woman, and to study medical matters; thus commonly D. Antonin, Navar, Cajetan, Petrocor, Sanchez, Bonac, Anacl, Sporer, Salm, Holzm, and many others with D. Thomas (5). This is also admitted by Nav, Hurt, Ronc, Salm, Elb, Spor, etc., even if a surgeon is acting in his profession, or a parish priest is hearing confessions. (1) Lib. 3, n. 477. — (2) N. 478. — (3) N. 479. — (4) N. 492. — (5) P. 5, quæst. 80, art. 7.

[*Latin ed. p. 210*]

TRACTATE IX. CONCERNING THE SIXTH COMMANDMENT.

198. Those who have frequently fallen into pollution may, if they propose to avoid sin in the future through suitable means, be absolved. However, a confessor is not obligated to hear the confessions of someone who, by doing so, would suffer a serious detriment. Indeed, if a parish priest or surgeon has repeatedly failed in such situations, and there is no reasonable hope of improvement, he is entirely obligated to abandon his office, even at the cost of his life (1). Similarly, many authorities, such as Cajetan, Bona, Laym, Sanch, Navarr, Filliuc, Salm, Spor, Croix; Busemb, Villal, Ledesma, Marchant, Trullench, etc., permit those who experience a strong urge to touch themselves to avert that urge, even if it leads to pollution. However, Roncaglia rightly prohibits this if the urge is not very intense, although he allows it if it is only with some disturbance. Nevertheless, it is not easy to believe that some young women who are accustomed to polluting themselves through touch use this supposed ardor as an excuse; for if they are carefully examined, it will often be found that this urge has been either aroused by previous wicked thoughts, or contracted by the habit of touching themselves.

III. Others, such as Castrop, Laym, Sanch, Armill, Less, Azor, Navarr, Vasq, Bonac, Anacl, Salmant, etc., permit riding for the sake of utility, and even for recreation, as stated by Sanch, Laym, and Castrop. Sanch, Laym, Castr, Holzm, and Sporer, among others, also state that it is permissible for anyone to lie in any position for the sake of comfortable rest.

IV. Finally, St. Anton, Less, Tolet, Pichler, Salmant, Holzm, and Sporer,

among others, commonly state that it is also permissible to consume warm food or drink in moderation, and to engage in honest exercises (2). If, however, certain causes have a slight influence on pollution, some say that all such causes should be avoided under the threat of serious pollution, even if they are only slightly blameworthy. Others allow this if the causes are mortal, although in a matter other than luxury. However, St. Anton, Suarez, Abul, Sanch, Sylvest, Sa, Roncagl, Bonac, Anacl, Salm, Holzm, and Elbel, among others, commonly and more probably teach that there is no serious obligation to avoid causes unless they are seriously blameworthy in the same matter of luxury. We have said "serious"; for there will be a slight obligation unless there is some cause, as Sanch, Less, Roncagl, Bonac, and Salmant, among others, more probably hold, contrary to Holzm and Croix, etc. Indeed, Roncaglia and Salm very probably state that one is not excused from a mortal sin who has frequently experienced pollutions from blameworthy causes (although not seriously in themselves) in a shameful matter, such as through the reading of obscene material, the sight of a picture that is not honest, or intercourse with animals, and the like, because with respect to such a person, the aforementioned causes do not have a slight, but a serious, influence. However, Salm and Sanch state differently regarding causes that are entirely trivial, which it would be morally impossible to avoid altogether (3). Pollution that occurs during sleep is not a sin, unless it was intended beforehand, or unless someone afterwards rejoices in the pleasure experienced; if, however, one rejoices in the relief, see treatise 3, paragraph 52. Finally, it must be carefully noted in this matter concerning the sixth commandment that, as far as possible, all severity should be employed, because in such a delicate matter, no precaution should ever be considered excessive, and many opinions that are probable in theory prove to be improbable in practice. Therefore, a confessor, even if he cannot certainly condemn a penitent for an action that they have not committed, may still allow the action. This is the duty of the physician of souls, pre-

(1) Book 3, paragraph 485, and book 5, paragraph 65, verse. What is here — (2) Book 3, paragraph 383. — (3) Paragraph 434.

[*Latin ed. p. 211*]

ON JUSTICE, RIGHT, AND OWNERSHIP. 199, especially with regard to those who have had a shameful habit in the past; for these, it will be necessary not only to avoid the immediate occasions, but also the remote ones; otherwise, because of their acquired weakness, they will always relapse into the same, since in this matter, to which men are naturally inclined, they easily progress from minor to greater evils.

TREATISE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. CHAPTER I. ON JUSTICE, RIGHT, AND OWNERSHIP.

1. Division of justice, right, and ownership.

2. Peculiar property: of the family head, and quasi-family head.

3. Of inherited property, or property acquired by children through commerce.

4. Of acquired property.

5. Of the wife's property.

6. Of the property of clerics.

7. Whether a beneficiary has absolute ownership of the fruits.

8. Who receives these fruits from the beneficiary.

9. In how many ways is ownership acquired, etc.

10-13. On prescription.

1. JUSTICE is divided into legal, distributive, and commutative. Legal justice concerns laws and penalties according to the laws; distributive justice concerns the merits of persons with regard to rewards and honors; commutative justice concerns the value of goods, so that each may receive what is due to him. Right, however, is divided into a right *in rem*, and a right *ad rem*. A right *ad rem* is that which provides a means of action to claim something that is not yet obligated. A right *in rem*, on the other hand, is that which provides a means of action over a thing that is already obligated, such as the right acquired by a buyer over the thing purchased, or by a cleric over the benefice conferred upon him. Furthermore, a right *in rem* is divided into ownership and usufruct. Ownership is either jurisdiction over subjects, or property in goods. Moreover, there is a direct right that the prince has in his fief, and the lord has in the *fundus* given in *emphyteusis*; and there is a useful right that the feudatory and the *emphyteuta* have. Usufruct, however, is the right to receive and even to alienate the fruits of someone's property; different from use, for which, he who has it, can indeed use the fruits, of which he and his family are in need, but he cannot alienate them to others (1).

2. Hence, it is to be considered concerning which goods the family head, wives, and clerics have ownership. And I. With regard to family heads, it is to be noted that their property can be divided into four categories: *castrense*, quasi-*castrense*, inherited, and acquired.

I. *Castrense* are those goods which the son acquires through military service, or because of military service.

II. Quasi-*castrense* are goods acquired in public offices, namely, of a judge, lawyer, lictor, doctor, and even a notary, as Nav. Mol. and Lugo teach; and Sanch. adds the office of an architect of the prince or the city. The son has full ownership of these properties, both in terms of ownership and usufruct. The same is said of that which is acquired by a family head who is a cleric, both because of his clerical office (according to what is contained in Authent. 1, c. de episc. et cler.) and (1) Lib. 3, n. 488 and 487.

[*Latin ed. p. 212*]

200. TRACT. X. CONCERNING THE SEVENTH COMMANDMENT.

Regarding any other title, according to the common opinion. Moller, Augustine, Sanchez, etc. (1), except for the title of benefit, concerning which the question arises whether a cleric acquires full ownership of the fruits, as we shall see in n. 7. 3. — III. Truly, the goods are considered *proficita* which the son has acquired through business dealings using his father's money, or which have been given to the son, but only with the father's intention. This peculium is solely the father's in terms of ownership, as the usufruct belongs to him. However, it should be noted that 1. if there is doubt as to whether the goods were given to the son with the intention of the father or of the son himself, then the son can fully retain them, provided he began to possess them in good faith. It should be noted 2. that goods given by the father to the son as part of the inheritance, in order, as it were, to provide for him, are no longer *proficita*; but these must be shared with the brothers, when the cleric seeks a portion of the paternal inheritance. Note 3. if the son engages in business dealings with paternal goods in the name of the father, the profit will be *proficita*; but if in his own name, it will be *adventitia*, as Lugo and Moller teach. And if there is doubt as to whether the profit comes from the father's goods or from another source, then only that which the son administered of the father's goods is considered *proficita*, as Lugo, Gomez, and Bartolus teach. Note 4. if the son engages in business dealings with his father's goods, living outside the paternal home, and receiving nothing from the father for his support, then the profit is *adventitia*; but if he engages in business dealings in the paternal home, and receives support from the father, then the profit is *proficita*. But if the service which the son performs is excessive, then he may claim a salary (1); concerning this, see below, n. 228. 4. — IV. Finally, *adventitia* are those goods which come to the son from sources other than the paternal estate, or which are given to the son with his own intention. If these are consumable goods, the father can dispose of them, but with the obligation to restore them to the son after his death; but if they are stable goods, the son has sole ownership, and the father has the usufruct, even if they are part of the family estate, as Lugo says. But in certain cases, the usufruct also belongs to the son, for example, 1. if the usufruct was also expressly given to the son, or if the donation was made against the father's will; 2. if the son succeeds to the father's inheritance together with the father; 3. if the son receives a dowry without the father's guarantee. Furthermore, outside of these cases, the son cannot dispose of the *adventitia* goods without the father's consent; and even with the father's consent, he cannot make a will regarding them, except for pious purposes, as stated in chapter 6 of the title "Concerning Burial." The usufruct truly belongs to the father as long as he lives, even if the son has left the paternal authority, provided that he has not been promoted to the episcopate, or to another high office; Salmant and Holzmuller say so. And if the father emancipates the son, Lugo says that half of the usufruct

belongs to the father, and the other half to the son; but this does not apply if the emancipation is for the purpose of marriage. Furthermore, he says that if the father allows the son to live outside the home, he does not therefore relinquish the aforementioned usufruct, unless he releases him so that he may obtain his livelihood elsewhere; or unless the son consumes this usufruct with the father's tacit consent (2). 5. — II. Regarding wives, their goods are either dowry goods or personal property, of which they have full ownership. However, the usufruct and administration of the dowry goods belong to the husband, while the ownership belongs to the wife, so that after the husband's death, she is preferred to all his personal creditors. And even during his lifetime, she can reclaim the dowry if the husband were to become impotent and unable to restore it. If, however, the dowry consisted of money, or other consumable goods, the husband acquires full ownership of them.

(1) Lib. 5. u. 489. vers. 6.

(2) Ibid. v. 4.

[*Latin ed. p. 213*]

OF JUSTICE, RIGHT, AND OWNERSHIP. 201. If, however, a man is granted the use of his wife's property, with the obligation to restore it to her afterward, the same principle applies. And the same holds true for stable property given to a man, which is assessed as belonging to him, and with the intention of sale; therefore, if it perishes, it perishes to him (1). 6.—III. The property of clerics is divided into four categories. I. Patrimonial property, which belongs to them by reason of some secular cause. II. Industrial or quasi-patrimonial property, which clerics acquire through ecclesiastical functions without a benefit, such as from sermons, masses, etc. III. Ecclesiastical property, which is acquired through benefices. IV. Parcimonial property, which a cleric sets aside from ecclesiastical revenues for his own support, living more frugally than he could have. And I. Regarding patrimonial property, there is no doubt that he has full ownership of it. II. The same applies to industrial property, according to the common opinion of Lessius, Sanch. Castrop., Lugo, Anacl. Salm., etc., and others, such as Sylvester, Azor, Angel. Bonac., Lugo, Salm., Less., etc., regarding daily distributions given to canons (contrary to Navarrum and Sanch.), because these are not given immediately as a title of benefit, but as a stipend for service, like a wage to a person (2). III. The same applies to parcimonial property, with regard to which a cleric can dispose at his pleasure, as also commonly stated by Navar., Cabas., Sotus, Less., Anacl., Covar., contrary to Petrocor. and others (3). And the same is expressly taught by St. Thomas (4), who says: "But with regard to those things which are especially assigned to a particular use (namely, to clerics), the same rule seems to apply as with regard to one's own property." The reason is that such revenues are given to the cleric as a stipend for the labors which

he performs in the service of the Church, according to what the Council of Agde declared in canon 36 (5). 7.—IV. A greater difficulty remains regarding ecclesiastical property that remains after the cleric's own support, whether he is obligated to restore it if he misuses it. There is no doubt that a beneficiary sins mortally if he misuses the revenues exceeding what is necessary for his support, and if he does not distribute them to the poor, or for other pious causes, as the Doctors commonly say (6). Therefore, is he obligated to restore it? The first opinion affirms this, according to Layman, Concina, Habert, Roncagl., Petrocor., etc., because, they say, there is no reason to believe that a beneficiary acquires ownership of the revenues of his benefice; and if he does acquire it, at least (as Laym., Bonac., Ronc., etc., say) he acquires a certain limited ownership, according to the mind of the Church, to which the supreme ownership of ecclesiastical goods belongs, namely, ownership with the annexed burden of distributing the surplus to the poor. The opposing authorities believe that this ownership is proven because of the division made earlier by Pope Simplicius, who ordered that one-fourth of the revenues of ecclesiastical goods be given to the Church, one-fourth to the bishop, one-fourth to the poor, and one-fourth to the clerics. But Habert responds that it is unknown whether this division ever had effect; therefore, he says, until it is upon proven that it was certainly carried out, the poor retain their right to all ecclesiastical goods exceeding the cleric's support (7). Nevertheless, it cannot be denied that the opposing opinion, held by Lessius, Lugo, Azor, Cabassut, Salmant., Holzm., etc., is quite probable, especially because of the authority of St. Thomas (8), who expressly teaches that the same rule applies to the revenues of benefices as to the revenues of patrimonial property; hence, in another place (9), he says:

[*Latin ed. p. 214*]

202 TRACT. X. CONCERNING THE SEVENTH PRECEPT OF THE DECALOGUE: If a cleric abuses the fruits of his benefice, he is not obligated to make restitution, but only to perform penance. And in the aforementioned passage, St. Thomas posits and affirms with certainty that the aforementioned division of goods had indeed taken effect; indeed, it should be noted that Pope Simplicius did not introduce this division, but rather found it already in place, and he merely ordered its execution, as appears from the same letter, in which he ordered the Bishop of Graudenz to restore three portions of the ecclesiastical revenues, which he had appropriated to himself for three years, retaining only the fourth part that belonged to him: "But if from these, the fourth portion is remitted, he must restore the three portions which he claims to have taken only for himself during those three years" (1). "From this, the authors of the second opinion deduce that the fruits of benefices, assigned to a cleric, pass into his dominion. And this seems to be confirmed by the Council

of Trent, Session 24, Chapter 12, on reform, with these words: 'The fruits which he has made his own, whether by reason of a benefice or residence.'" And by the Council of Lateran V, Session 9, § Statuimus, where it is said that a beneficiary, if he omits the office of reciting after six months from the day of possession, does not make the fruits his own; therefore, if he does not omit it, he does make the fruits his own. 8. — Hence, the question arises whether one who receives a gift from a beneficiary of these superfluous goods gravely sins, and is obligated to restore them to the poor? A distinction must be made: if, by such a donation, the beneficiary is not rendered unable to satisfy his obligation, and the recipient receives the goods in good faith, he is not obligated to do anything; for he received them from a cleric who was probably (as stated above) the owner, at least with limited ownership. But if the cleric were rendered unable to return, and the recipient received the aforementioned fruits with bad or doubtful faith, we say that he ought to restore the greater part to the poor, according to what will be said in a similar case, no. 128. "Greater," because, since it is equally probable with St. Thomas's first opinion, namely that the beneficiary is the absolute owner of the fruits, the recipient cannot be held liable for the whole amount, but he is nevertheless obligated to restore the greater part, because, as is said in a similar case (2), one cannot acquire possession of something with only a probable opinion. Concerning the administration of the fruits of a benefice, let what we say in Tract. 13, from no. 45, be observed, when speaking of the obligations of beneficiaries. 9. — Finally, let us see in how many ways ownership is acquired. Ownership is acquired in three ways, namely, by the will of the owner, by the law of nations, and by positive law. And I. ownership is acquired by the private will of the owner, and this will be discussed when dealing with contracts. II. By the law of nations, namely: 1. Occupation, for things which do not have an owner are granted to the first occupier; § Feræ, Institutes on civil law (we will speak of treasures and things found in nos. 69 and 70). 2. By birth, because the fetus of animals belong to the owner of the stable; § Likewise, in the same title, 3. By alluvium, for if something is added to the land of another without being noticed, it is acquired by him; otherwise, if it is obvious; § Furthermore, in the same title, 4. By accession, for example, if an ornament is attached to your garment (which is difficult to separate, such as a garment embroidered with needles), it becomes yours; § However, 5. By specification, when a form of material is given by one person, it is acquired by him, upon payment of the price to the owner of the thing; § With (1) Letter of St. Simplicius to Florentius, op. Hardquin, in collect. concil. vol. 2, page 380. — (5) Lib. 5, no. 492, v. Quær. VIII.

[*Latin ed. p. 215*]

OF JUSTICE, RIGHT, AND OWNERSHIP. 203 aliena (1). 6. Confusion, for example, of oil with oil; as a mixture, for example, of money with

money, grain with grain, then the thing belongs to the owner (provided the owner's thing is the greater portion), but with the obligation of restoring to the owner of the lesser portion its value, as is stated in the law. If foreign coins are mixed, see the sections on payment. And what is true of money is also true of other similar things, as Less, Lug, Vasq, and Sylvest say. Furthermore, the owner of the lesser portion can always take his share from the whole, as Less, Castrop, Salm, and Trullench probably say (2). 7. Adificatio, if someone builds on his own land using material from another, he acquires ownership of the material with the obligation of restoring double its value; if, however, someone builds with his own material on another's land, he loses everything; § In his own, Institutes of Civil Law, because it is presumed that he wishes to donate, otherwise if it is clear that he did not wish to donate; law 1, chapter on the recovery of property. 8. Plantation, as if someone plants an alien tree on his own land. However, if the plant is located next to the boundary of another's land, and its roots extend into that land, it becomes common property, § 31, idem. If, however, a tree located near another's land extends its branches into the owner's land, it is not permissible to cut off those branches, unless the neighbor, having been warned, refuses to do so (3). 9. Perception of fruits in good faith, § If someone, in the same place. 10. Tradition of the thing, by which the owner transfers ownership to another, § By tradition, idem. loc. 10. - III. Finally, ownership is acquired by positive prescription. But for prescription, four conditions are required: 1. Good faith, by which the possessor believes that the thing is his own. 2. A just title, of purchase, donation, etc., at least presumably or colorably, as La-Croix says with common usage (4). 3. Continuous possession. 4. That the thing is not defective, but suitable for prescription. Regarding the third condition, it should be noted that possession must be continuous for three years for movable goods, as stated in § 1 of the Institutes on usucaption, whether among present parties or absent parties; as Less, Anacl, and Verde say with commentary, against Bonac, who wants four years for absent parties. Nevertheless, Busemb, with Trullench, etc., require two years for present parties and four years for absent parties for fruits received. For immovable goods, a period of ten years is required for present parties, and twenty years for absent parties who reside in different provinces, as Lugo says. If someone is partly present and partly absent, the years of absence are doubled; for example, if he is present for eight years and absent for two, these two are doubled, and 12 years are required for prescription. If there is no title, 30 years are required for both movable and immovable goods. For immovable goods of the Church, 40 years are required, c. 1 of the Institutes on restitution and of the Roman Church, 100. But is the same period of 40 years required for movable goods of the Church? Anaclet, Hostiensis, Panorm, etc., affirm this, saying that no distinction is made in the aforementioned text. But Bonac, Less, Laym, Molin, Castrop, and Lugo

believe that three years are sufficient. Both opinions are probable (5). It should be noted that the possessor of a benefice, for three years, or of its fruits, already acquires ownership according to the rule of the chancellery, related by La Croix (6), even if there was no title; provided that there has not been an intrusion, or a simoniacal entry. 11. It has been said that possession must be continuous; for possession can be inter- (1) Book 3, n. 493 to 497. - (2) n. 498 and 499. - (3) n. 500 to 503. - (4) n. 504 and 505. - (5) n. 500 to 511. (6) La-Croix, book 4, n. 689.

[*Latin ed. p. 216*]

204 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE.

Acquiring dominion through prescription can occur either naturally, through the cessation of use; or civilly, as in the case of a just dispute over property, or if possession is continued with manifest ignorance of the law, as we have maintained, following a more probable opinion of Molin, Dicast. Croix, etc. (contrary to Lugo, Lessius, Castrop, etc.), because, when civil good faith is lacking, the laws (by which dominion is acquired) do not allow for prescription. However, if possession has already begun in good faith, and a doubt arises, and due diligence is exercised but the truth is not found, Ancl, La Croix, and Lugo, along with Molin, Lessius, and the common opinion, assert that prescription is not interrupted (1).

12.—It should be noted: 1. That a particular successor (such as a buyer, legatee, etc.) of a possessor in bad faith can acquire dominion through prescription; but never an heir, as Molin, La Croix, and others commonly state: and in Naples, this has already been decided by the Sacred Congregation of Four. And this holds even if the person is the heir of an heir, as Lugo, La Croix, etc., more probably maintain, contrary to Lessius. It should be noted: 2. That even good faith can lead to prescription, including the release from an obligation to pay a debt, if the debtor is invincibly ignorant, as Lugo and Croix state. Also, it should be noted that in the aforementioned decision, a prescription of 30 years was admitted in favor of a third possessor, provided that good faith is presumed unless the plaintiff clearly proves the contrary. Furthermore, it was stipulated that lawyers and notaries could not claim their fees after two years. The same stipulation applied to notaries regarding documents, if they did not have a copy, because once a copy is presented, the right to sue is denied. The same applied to pharmacists with respect to principal debtors, because they could not sue the debtors' heirs after two months; artisans after one year; and servants similarly after two months. But it should be noted that such prescriptions (as stated there) do not apply if the plaintiff produces a public or private document in their favor. Furthermore, it was stated that these prescriptions are not effective through prescription itself, but through the force of presumed payment; so

that the debtor remains obligated in conscience, who truly knew that the debt had not been paid (2).

It should be noted: 3. That to certain privileged persons, namely minors, religious institutions, and wives concerning dowries, restitution is granted within four years after the completion of prescription to recover the prescribed property (3).

It should be noted: 4. That prescription requires that the thing be suitable to be prescribed; therefore, stolen goods or goods possessed by force are never subject to prescription. However, those things which a third possessor received in good faith from a former owner can be subject to prescription, but require 30 years for those present and 40 years for those absent, otherwise they cannot be prescribed. To prescribe property belonging to the treasury, 40 years are required (4).

13.—Finally, it should be noted that there is a common opinion among theologians and jurists, even in foro conscientiae, that dominion can be acquired through prescription (as stated by Cajetan, Lessius, Lugo, Sylvius, Covarrubias, La Croix, and others). This is proven from the chapter on prescription, where only prescription in bad faith is condemned; while it is possible for human law to transfer dominion of property from one person to another for the common good, in order to avoid many lawsuits. And it should be noted that the common law of prescription in our kingdom of Naples, although not admitted in the external forum due to the difficulty of proving good faith, is nevertheless not found to be repealed by any other law, as Staib, Gallup, Prato, Ver, and Amato state; therefore, even (1) Lib. 3, n. 511, v. Si vero. — (2) N. 516. — (3) N. 514. — (4) N. 515.

[*Latin ed. p. 217*]

ON THE ESSENCE OF THEFT. 205 In our kingdom, as the aforementioned authors state against Ursil and Ravit (and as the most learned Bishop D. Julius Torni also taught me), we can lawfully use something that has been legitimately prescribed. CHAPTER II. ON THEFT. POINT I. ON THE ESSENCE OF THEFT. 14. What is theft? — 15. Concerning the poor in extreme or quasi-extreme necessity. — 16. Concerning the redemption of Christians. — 17. Whether the poor are obligated to ask (for help), etc. — 18. Whether one can take something of great value. — 19. Concerning someone who commits theft out of extreme necessity. — 20. Whether a rich person, by not helping the poor, is obligated to make restitution. — 21. Concerning compensation. 14. THEFT is defined as: "The secret and unjust taking of another's property" without the reasonable consent of the owner. It is called 1. *secret*, to distinguish it from robbery, which is committed with force, and it adds a new fault of injustice because of the injury. If the thing taken is sacred, it adds sacrilege. It is called 2. *unjust*, because otherwise it is not theft, nor sin; hence, it is not sinful, for example, when a wife takes money from her husband to prevent her from

squandering it, or wine to prevent her from drinking it (1). It is called 3. *without the reasonable consent of the owner*; for in two cases, one can take another's property, even without the owner's consent, namely, in extreme necessity, and when just compensation is given. 15. — And I. Regarding necessity, if someone takes something belonging to another, either for themselves or for someone else who is in extreme necessity, as much as is strictly necessary, they do not sin, understand that if they have nothing of their own, as stated in section 4, paragraph 19, because in such a case, goods are common, according to what all teach, along with St. Thomas (2). The same applies to quasi-extreme necessity, as Lugo, Lessius, Sotus, Cajetan, Azor, Sylvester, and the Cardinal of Salamanca, among others, commonly state. This necessity exists when someone is in probable danger of death, as Navarr, Vasquez, Roncaglia state, or is in danger of losing a principal limb, as Castrop, Dicastilla, and Tamburini state, or is in danger of being captured, or condemned to the galleys, or of suffering a very serious or permanent illness, or of incurring disgrace, as Lugo, Roncaglia, Elbel, and Sporer state, citing St. Thomas. The same is said by Father Mazzuchelli, along with Suarez, etc., concerning the danger of a daughter being prostituted: but the latter is more likely denied by Salamanca. However, it seems more probable to me, along with Lessius, Castrop, Bann, Roncaglia, Viva, etc., that a nobleman can provide for himself with something belonging to another if he is in extreme necessity, and is so ashamed to beg that he would rather die. 16. — But here, more doubts arise. And 1. Whether the wealthy are obligated to redeem Christians from the Turks. Some commonly affirm this, along with Azor, Cajetan, Major, and Filliu. Others deny it, as Sporer does with Hurt. But if Sporer does not hesitate to concede that someone can take something belonging to another if they are found to be in danger of being captured, how can he later deny that the wealthy are at least obligated to contribute some moderate amount to redeem those who have been captured? Father Concina writes as follows, and very probably: if a wealthy person certainly knows that someone among the captives is in danger of losing their faith or their life, then their obligation is greater. Furthermore, he adds, if the redemption were to involve a large sum, he would not dare to impose such a burden on the wealthy, because (1) Book 3, paragraphs 519 and 519. — (2) *Summa Theologica*, II-II, question 66, article 7. — (3) Book 3, paragraph 520.

[*Latin ed. p. 218*]

206 TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE: This could incite the Turks to harass Christian captives more severely and to launch greater incursions, which would subsequently harm the common good of the faithful (1).

17. — Question 2: Does an extremely poor person sin mortally by taking

something belonging to another, even if he first asks for it? Coninchius condemns this as a mortal sin; but others, such as Lessius, Layman, and Concina, generally consider it only a venial sin. We agree with Cardinal de Lugo, in the following manner: If the thing in question is not absolutely necessary for the poor person, he sins gravely by taking it without asking, because otherwise all the poor could steal from others without asking. However, if the thing is absolutely necessary for him, he does not sin at all, as St. Thomas says (2), because he then has the right to claim it for himself (3). We speak of an "extremely poor" person, because in extreme necessity, no one is permitted to take something from another, as stated in proposition 36 condemned by Innocent XI.

18. — Question 3: In the case where the thing is absolutely necessary for the poor person to preserve his life, can he take it, even if it is of great value? La Croix and Concina deny this; but it is more correct to affirm, as Lugo and Sporer do, and as Croix calls probable, that in extreme necessity, the poor person has the right to the goods of another, whatever their value may be. It does not contradict this to say that in this case, the rich person is not obligated (as the more common and probable opinion holds) to help the poor person at such an expense, for example, by spending three or four thousand gold coins; as Lugo, Castrop, Coninchius, etc., say, unless the poor person is his father or son; for charity does not obligate with such a burden. Responding in the same way as Cardinal de Lugo, just as at the beginning of the world, before the division of goods, everyone could provide for themselves as needed; and no one was obligated by justice to provide for their neighbor, so in a case of extreme necessity (in which goods become common), the poor person can rightly take the rich person's goods, but the rich person is not obligated by justice to provide for him; he would only be obligated by charity; but charity (as we have said) does not obligate with such an expense. However, if it were positively an impediment, he would sin against justice (whatever Sporer may say); because the poor person, having the right to use that thing, also has the right not to be prevented from taking it (4).

19. — Question 4: Is a thief obligated to make restitution for what he has taken, after having consumed it out of extreme necessity? Lessius, Azor, Concina, and others, probably and generally affirm that a subsequent necessity does not extinguish the obligation of restitution already incurred. However, despite this, I do not dare to reject the contrary opinion of Castrop, Navarr, Coninchius, Sporer, etc. (which Lessius himself calls probable), because in such a case, the thief has the same right to that thing as any poor person has to provide for himself. Nevertheless, this is understood in two ways: 1. Whenever the poor person needs that particular thing, as we said in the third question. 2. If the poor person is not only poor in possessions at that time, but also in prospects (5); for under this distinction, we agree with Castrop, Lugo, Valent, Holzm, La Croix, Sporer, Salmant,

and others, that if someone is also poor in prospects, then just as the rich person is absolutely obligated to give him what he needs in alms, and would not satisfy the obligation by lending it to him; so, if the poor person were to become able to make restitution, he is not obligated; he would be obligated, if he himself (r) Lib. 3. n. 520. Quær. I. — (a) 2. 2. g. 66. a. 7. — (3) Lib. 3. n. 520. Quær. II. — (4) N. 520. Quær. III. — (5) Ibid. Quær. IV et V.

[*Latin ed. p. 219*]

OF THE AMOUNT OF THEFT, ETC. 207, otherwise he would have had other goods, or at least a reasonable hope of obtaining them. 20.—It is questioned: 5. Whether, if a rich man neglected to help a poor man in extreme need, would he be obligated to make restitution? Laym. and Concina affirm, saying that the poor man would then already have the right to receive the rich man's goods. But Less. Lugo, Suar Vasq. Coninch. Sanch. Holsman, Salmanticenses, etc., most commonly and correctly deny this, because, as we have seen above, if such an obligation exists, when the necessity ceases, it does not obligate to any restitution; and although the poor man may have had the right to the rich man's goods, he nevertheless did not acquire the right to them (1). 21.—II. It is also possible to take another's property without his consent, when a just compensation is involved. Three conditions are required for a lawful compensation to be considered hidden: 1. that it is not done to the detriment of the debtor; 2. that the credit is certain and liquid; 3. that satisfaction cannot be obtained in any other way: therefore, the creditor must first demand it in court; although if this is neglected, it will not be a grave sin, nor even a minor one, if the legal proceedings would involve expenses, hatred, or other damages; therefore, a servant does not sin regularly if he secretly compensates himself, when the master has not satisfied the agreed salary; or if he was unjustly induced by the master to serve for an unjust salary; but it should be noted that in such a case, he cannot take more than the lowest price (2). Whether servants can compensate themselves for extraordinary work, see what is said in chap. 7, no. 11. POINT II. OF THE AMOUNT OF THEFT, IN ORDER FOR IT TO BE A GRAVE MATTER. 22. Of the gravity of the matter with respect to different classes of persons. — 23 and 24. Of thefts of vines. — 25. And of wood. — 26. Of minor thefts. — 27. Of relics. — 28 and 29. Of minor thefts that are committed, and especially by innkeepers. — 30. Of minor thefts committed at the same time by many. — 31. He who takes a little after a grave theft. — 32. Of thefts by sons. — 33. By wives. — 34. By servants. 22.—In order to determine whether the amount of a theft reaches the level of a mortal sin, it must be considered not only in itself, but also with respect to the persons, time, and place; for example, taking a needle from a tailor can be a grave matter, if he could not obtain another means of providing for himself there. And so, it can also be grave (at least against

charity) to steal an object of little value, if the owner would suffer a great penalty because of its loss (3). But speaking of the amount of the theft in itself, this is measured differently according to the different qualities of the owners. And because such a measurement depends on the estimation of wise men, the Salmanticenses rightly say that opinions on this matter are more likely to be true the more they are in common. I. With respect to the poor who beg, the Doctors commonly assign a royal (which is also called a julius or argenteus, and which represents a carolus of our currency) and also half a royal in the rare case of great poverty and need. II. With respect to the poor who work, two royals; although the Doctors speak differently about miners than about artisans, so we say that for miners, it is a grave matter of two royals, but for artisans, at least two royals and a half are required, if their daily profit is only that amount or more. III. With respect to those who live on their own income, the Council and Bonaventure assign for a grave matter (1) Lib. 3. Quær. VI. n. 530. — (2) N. 531. — (3) N. 530.

[*Latin ed. p. 220*]

208 TRACTATE X. ON THE SEVENTH COMMANDMENT. Three *julii*; more commonly, others assign four; and still others, up to five. Nevertheless, a distinction must be made in this regard; for although some may live on their income, they nevertheless lead a narrow life, and for them, three royal coins will be a serious matter, and perhaps less if they live very poorly. Conversely, for a very wealthy person, Cardinal Lugo requires six, or even seven royal coins. IV. With respect to very wealthy merchants, many Doctors require three *florens* (a *floren* is equivalent to three royal coins); but this sum seems to me to exceed what is necessary; I prefer to follow Croix, who, with regard to these, requires eight royal coins, while for other merchants of moderate fortune, the Doctors require four royal coins; but I believe that for those who are of modest means, even two and a half royal coins will suffice for a serious matter. V. With respect to nobles, it is commonly required that a gold coin (namely, a *ducat* or shield) be given; although others may desire something greater. And Sanchez and Cardinal Lugo say the same with respect to very wealthy communities. VI. With respect to kings, they say that a sum exceeding two gold coins is not a serious matter; thus say Sotus, Sylvester, Wigandt, Laym, P. Navarrus, Bannez, etc. (1). 23. — It should be noted, however, 1. that in the case of stolen goods exposed, such as fruits along the roads and wood in the forests, a greater matter is required for theft to be considered serious (2). 24. — But here, a doubt arises: 1. Is it permissible to eat grapes in a neighbor's vineyard? Covarrubias, Valerius, Ripa, etc., admit this, citing the text of Deuteronomy: "When you enter the vineyard of your neighbor, you may eat your fill at your ease, but you shall not put the sickle to it." 23, 24. And Abulensis says the same about apples and other fruits. Conversely, Lugo and Holzmann deny this, saying that this is to be

understood only for the Hebrews; indeed, only for the grape pickers who work in the same vineyard. However, these two assertions are not proven, since Joseph, the Hebrew, and many other authors cited by Calmet, believe that the text speaks not only for the Hebrews, but for all; and that it is to be understood not only of grape pickers, but of all who pass by, which the very words of the text seem to prove: "When you enter the vineyard," etc., words which rather indicate those who are passing through than those who are already working in the vineyard. Therefore, I do not consider the first opinion to be improbable. Furthermore, Lugo concedes that anyone may take one or two apples, or two grapes, from a vineyard through which they pass (3). 25. — It is doubted 2. whether it is permissible to gather wood in a forest belonging to another. In this matter, a distinction must be made between wood from a community forest and that which belongs to private individuals. If the forest is of the community, it is permissible for the community to prohibit the export of wood under a certain penalty (provided that there is another place from which anyone can conveniently obtain it); nevertheless, the Doctors commonly say that if the forest belongs to the entire community, the inhabitants who violate the prohibition do not commit a mortal sin (indeed, Sotus, Sanchez, Sa, Angelus Cordubaensis, hold that they do not even commit a venial sin), nor are they liable to any restitution, but only to a penalty after a judicial sentence; for such a prohibition is considered to be a law purely penal, which does not obligate to guilt. And Lugo, Molinius, Bonacich, Filliucius, etc., say the same about one who gathers wood from a neighboring community forest, because in that case, it is presumed that the community is content with the penalties it demands, and does not require restitution. This, however, is understood, provided that the cutters do not cause great damage (1). — Lib. 3, n. 527 and 528. (2) N. 529, v. 3, *plus*. — (3) N. 529, Question 2.

[*Latin ed. p. 221*]

OF THE QUANTITY OF THEFT, etc. 209: Trees, when causing significant damage to the community, are a matter of concern. Therefore, Sanchez, along with Henry, excuse those who cut down only one load of wood per day for their own use, or two loads per week, in order to sell the wood and support their families. The same principle applies, as stated by Soto, Molin, Sanchez, Bonaventure, and others, when two neighboring towns are present, and their inhabitants commonly cut wood from each other's forests. This applies to forests belonging to the community; however, if the forests were privately owned (regardless of what others may say), we say, along with Soto, Molin, Bonaventure, and many others, that those who cut wood are obligated to make restitution; because the owners have absolute dominion over their forests, and can, at their discretion, sell wood to others. And Croix correctly states that this applies to those who have purchased or leased all the wood from private individuals; because then the community

transfers all of its rights over the forest to them. What is said about forests also applies to pastures (1). 26. - Note 2: A greater quantity of goods is required to constitute a grave sin in minor thefts; because, although this proposition is rejected by Innocent XI: "No one is obligated to restore under the penalty of mortal sin what has been taken by a few thefts, no matter how large the total amount," a grave sin can still occur, even if all the thefts involve small items, and even if they are committed against different owners, as we will explain in the following sections. Nevertheless, the Doctors commonly require a greater quantity of goods for minor thefts, and an even greater quantity if the thefts are committed against different owners, and a still greater quantity if they are committed at different times. Lessius, Trullius, and Villalobos state vaguely that for thefts committed repeatedly, double the quantity is required to be considered grave; for example, if four *julii* are required for a single instance, then eight *julii* are required for multiple instances. However, I believe the opinion of others is more reasonable, who make a clearer distinction, and state that if the thefts are committed repeatedly, and at different times, then half again as much is required, namely six *julii*. If the thefts are committed against different people, and at different times, then double is required, that is, eight *julii*. But this is understood only if the thief did not initially intend to take a large quantity of goods, because in that case, the same rule applies as in a single theft. On the contrary, it is not understood when a significant interval of time passes between one theft and another; because in that case, the small thefts do not coalesce into a grave sin. There is disagreement among the Doctors regarding what interval of time is considered so significant that it excuses one from restitution under a grave obligation? Laym says one year; Tolet, Navarrus, Fillon, Vivaldus, and others say one month, and even fifteen days; but I agree with Roncaglia and Vives, who refute this opinion; Vives only admits this if the quantity of goods is very small; and Roncaglia seems to agree, stating that an interval of at least two months is required, when the quantity of goods from any theft would be considered to approach a grave sin (2). Therefore, according to this opinion, an interval of two months excuses one from the grave obligation to restore small items stolen within those two months, which do not amount to a grave sin. 27. - Note 3: Just as one does not commit a grave sin by delaying restitution for a short time, as commonly taught by Sanchez, Rebellino, Vasquez, Sayr, Lugat, and La Croix, nor is it a mortal sin to steal a significant sum from another with the intention of quickly restoring it (3). And here, it should be noted that anyone who steals even a small part of sacred relics in the district of Rome incurs a *latae sententiae* excommunication from Clement VIII. (Contra) 1) Lib. 5, n. 529, Quær. I. - (2) N. 530. - (3) N. 531. 14

[*Latin ed. p. 222*]

210. TRACTATE X. ON THE SEVENTH COMMANDMENT. It is proba-

ble that those who steal a small portion of relics in FÜRTH, Castrop, Croix, Bonac, and others, without damaging them, are excused from grave guilt, provided that the relic is not of particular significance or rarity, such as the Holy Cross, or a garment of Christ, or hairs of the Blessed Virgin (1).

28. Note 4: Regarding minor thefts, some, as Angelus P. Nav. and Med. have said, hold that such thefts, when committed from various owners, do not require a serious restitution. Nevertheless, this opinion is contrary to the common opinion, and should be entirely rejected, as rightly stated by Lug. Sanch. Salm., etc., because such thefts, when joined together, always become a serious matter (according to what is said in n. 22), and therefore a serious restitution is required. The reason is that the commandment against stealing obligates not only to avoid causing serious harm to one's neighbor, but also to prevent oneself from becoming enriched at the expense of another's property (2); however, when thefts are committed from various owners, a greater matter is always required, as stated in n. 26. But here, the question arises: to whom should restitution be made in such a case? If the owners are uncertain, it is not doubted that restitution should then be made to the poor or to pious institutions, as will be explained more fully in n. 67. If, however, the owners are certain, it seems, according to the general rule, that restitution should be made to them, even if each person's portion is small; nevertheless, I believe, along with other learned theologians (whom I will consult on this point), that one does not sin gravely by restoring to the poor of the locality: for in such a case, the theft has not caused serious damage to the owners, but to the common good, since, because the principal right to the stolen goods belongs to the common good, it is presumed that it is not seriously objectionable if restitution is made to the poor or to pious institutions, which are more in need. Therefore, we conclude that one who restores to the poor or to pious institutions of the locality is excused from mortal sin, and also from venial sin, if there is some reason why restitution cannot be made to the owners without serious inconvenience or danger to reputation, or if there are very needy poor to whom the owners would presumably consent to have the restitution made (3). The same applies to restitution that should be made by innkeepers for minor thefts, such as oil, wine, etc.; in such a case, we say, with the most common opinion, that (in itself) restitution cannot be made to the poor, as some say, but to the citizens who ordinarily purchase these items in the same inns; but one who restores to the poor, for the reason mentioned above, would be excused from grave sin, and also from venial sin, if restitution cannot be made to the citizens without danger or without significant inconvenience (4).

29. Note 5: Although a serious theological guilt is required for the serious obligation of restitution, as we will say in n. 39, nevertheless, in minor thefts, when one becomes involved in a serious matter, and is obligated to make a serious restitution, even if in the last theft that completed the serious matter, one did not recognize mortal sin; for then one is obligated

not for the just acceptance, but for the just retention of another's property: so generally Lug. Card. Viv. Tamb. La-Croix, etc., against a few. It should be noted, however, that in order for one to be freed from grave guilt, it will be sufficient to restore only that small amount that completed the serious matter, as say Less. Sanch. Bonac. Vasq. Elbel and La-Croix against others (5).

30. Note 6: If it happened that many people stole a small amount, provided they did not do so with common intent, no one of them would sin mortally, even if each one witnessed the theft of another, and the serious damage that was caused to the owner: so generally Habert, Lugo, Less. (1) Lib. 3. n. 53a. — (2) N. 534. v. Ilie quær. I. — (3) N. 534. Quær. II. — (4) N. 5p5. — (5) N. 535.

[*Latin ed. p. 223*]

OF THE QUANTITY OF THEFT, etc. 211 Sanch. Salmant. etc., and this proceeds, even though they steal at the same time, as Less. Sot. and Sanch. say (contrary to Lugo); because then neither is truly, by himself, the cause of the damage to the owner, to whom the damage is rendered grave by accident. And although one may be led by the bad example of another, it is the common opinion of Mot. Bonac. Less. Sanch. Lugo, Salmant. and others, that anyone who steals a small amount of property, causing a grave damage to the owner, sins gravely against charity because of the scandal that they thereby present to others, but not against justice; for an example is not a cause that positively contributes to another's damage (1). 31. — Note 7. If someone, having already taken a large amount of property, commits other minor thefts, Lugo, La-Croix, etc., hold that he always commits a new grave sin; but Less. Bonac. Tapia and Salm. say that the subsequent thefts are not mortal, unless they amount to a new grave amount (2). 32. — Note 8. Thefts committed by household members, such as children, wives, and servants, require a greater amount to be considered grave, since the owners are less averse to them, or at least less reasonably averse, than to outsiders; and often they are averse more in terms of the manner (that it is taken secretly) than in terms of the substance. And speaking individually, 1. Regarding thefts by children, Less. Navarr. Filiuc. say that a son does not sin gravely by stealing two or three shields from his father; indeed, Bann. says that from a very wealthy father, theft is not mortal unless it amounts to 50 shields; but this is reasonably rejected by Lugo and La-Croix, unless the son is a prince. And Holzm. says the same, who, on the contrary, admits that it is not grave to take ten shields from a very wealthy father; Sanch. admits up to six. If, however, the father were to send his son, who is studying elsewhere, one hundred shields, Sotus, Navarr. Laym. etc., say that the son may spend five of them on honest recreation (3). However, Less. notes that although the son may have sinned gravely by stealing from his father, he is not obligated to make restitution when the theft has already been committed, and it

is presumed that the father does not wish to obligate him to do so (4). Whether, however, the son may compensate himself from the salary of his labor by engaging in business in his father's home, let us observe what we will say below, n. 228, speaking of partnership. 33. — 2. Regarding thefts by wives, a greater amount is also required. Otherwise, a wife may take something for the necessary expenses of the family, if the husband does not take care of them, as Bonac. Trullench. and Busemb. say (5). Furthermore, if the wife has poor parents, or children from another marriage, she may take something from the common assets, and even the husband, as much as is sufficient for them to live according to their condition, even if the husband objects, because his objection is unreasonable; thus Navarr. Castrop. Less. Busemb. etc. Indeed, Lugo, Molina, Sanch. Less. and Trull. admit this even for poor brothers. However, it should be noted that if the wife gives goods to the husband or to children of the first marriage who are in need, she is obligated after her death to compensate the children of the second marriage (6). Furthermore, she may properly spend on alms and gifts, according to the custom of her equals, as the Doctors commonly say. Molina says, along with some others, that a wife may spend up to one-twentieth of her husband's annual income (1). — (2) Lib. 5. n. 538. — (3) N. 543. — (4) N. 544. — (5) N. 541, ad 5. — (6) N. 542.

[*Latin ed. p. 224*]

212 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE, namely, concerning theft; it is said to be a sin in a hundred; but this sum is considered by some, such as Lugo, Sporer, etc., to be excessive, at least in a general sense (1). 34. — 3. Concerning the theft of servants, the Doctors, such as Lessius, Cajetan, Navarrus, Sanchius, Sporer, Busembus, etc., commonly say that minor thefts committed by servants, concerning food that is not usually carefully guarded, never constitute a grave fault, provided that they do not sell it or take it out; and provided that they do not take it in extraordinary quantities; or (it should be added) if the items are not of extraordinary value (2). CHAPTER III. ON RESTITUTION. PARAGRAPH I. FROM WHAT DOES RESTITUTION ARISE, AND FOR WHAT FAULT IS IT DUE? 35 and 36. When is there an obligation to make restitution? — 37. On the roots of restitution. — 38 and 39. On theological and juridical fault. — 40. Does a venial fault obligate to make restitution? — 41. Does only juridical fault obligate in contracts and offices? 35. — The present matter of restitution requires careful consideration, both because it involves very complex questions, and because the confessor must also be careful not to create scruples for himself, whether concerning those who are obligated to make restitution, or concerning those who are not obligated, and especially concerning those who are in good faith possession of the property. Indeed, according to the opinion of authors who maintain a stricter view (such as Habert, Natalis de Alexandro, Wigand, Henno, etc.), even these should not

be compelled to deprive themselves of their possessions, unless it is established that they unjustly possess another's property. Therefore, both in this matter of restitution, and in the following chapter concerning contracts, I have taken extraordinary care and diligence in my work, which is a task of greater importance in moral theology. Therefore, it is also necessary that, in this practice, I present a more extensive discourse than usual, noting the variety of opinions of the Doctors concerning many questions, and the important points of their reasons, at least briefly and as thoroughly as I can. 36. — Restitution is defined as: "An act of commutative justice by which the damage inflicted upon a neighbor through injury is repaired." It is called 1. an act of justice, because not every injury inflicted upon a neighbor (such as when it is contrary to charity or another virtue) gives rise to an obligation of restitution, but only that injury which infringes upon a right that the neighbor has in a thing or with regard to a thing. It is called 2. commutative justice, because the legal injury which concerns the observance of laws, and the distributive justice which concerns the merits of persons with regard to rewards or punishments, do not give rise to an obligation of restitution. It is called 3. by which the damage inflicted upon a neighbor through injury is repaired, because the obligation of restitution arises not only from theft, but also from the damage done to a neighbor through his injury (3). 37. — The roots or reasons for restitution, which are commonly assigned by moralists, are two: 1. From the unjust acquisition, to which are joined the roots arising from the unjust damage. 2. From the unjust retention, to which is joined the other root arising from a contractual obligation (4). 38. Furthermore, it should be noted that there is another fault, which is theological and affects the conscience, and is properly a sin; and another which is juridical, and

(1) Book 5, n. 540. — (2) n. 5457. — (3) n. 547. — (4) n. 548.

[*Latin ed. p. 225*]

WHERE RESTITUTION ARISES, etc. 213 concerns the laws, and this is divided into a grave fault, which occurs when due diligence is omitted that which all ordinarily employ; a lesser fault, when diligence is omitted that which is employed by diligent men; and a very slight fault, when diligence is omitted by those who are most diligent. And speaking of this juridical fault, the Doctors say that if a contract is made for the benefit of the one receiving the thing, as in the cases of a loan and a gratuitous loan, the borrower is bound to restitution even for a very slight fault; if the contract is made for the benefit of the one holding the thing, as in the case of a deposit, the depositee is bound only for a grave fault; but if the contract is made for the benefit of both parties, then the recipient is bound for a lesser fault (1). 39. — With this established, the Doctors commonly say that, for juridical fault alone, no one is bound in conscience to restitution under a grave fault, unless there is also a grave theological fault; thus Navarr, Sotus, Azor, Lessius, Cabass, Lugo, Laym, Salm, Ronc, and all the others. The reason

is that for conscience to remain obligated, it must be clear in conscience that a fault has been committed; and because the obligation is grave, the fault must also have been grave. Therefore, he who does not intend, nor foresee the damage to his neighbor (at least in a confused way), even if he engages in an illicit act, is not bound to anything; just as the thief is not bound to anything who, while committing theft, does not actually steal, but his action is the cause (but entirely accidentally) of the burning of crops: thus Lessius, Rebellius, Bonacini, Salm, and others commonly (2). 40. — It is questioned: 1. Does a venial fault obligate to restitution? It is necessary to distinguish: if the fault is venial because of the smallness of the matter, then it certainly obligates to restitution, but no more than under a lesser fault; but if the fault is venial because of imperfect awareness, or a lack of full consent (both conditions necessary for mortal sin, as stated in part 3, paragraphs 24 and 26), then some say, as Laym, Molin, La Croix, etc., that it induces an obligation to restore only a small amount, according to the degree of the fault. But the more common and probable opinion of Lessius, Lugo, Sanch, Azor, Sa, P. Navarr, Filliuc, Ronc, Viva, and many others, holds that it induces no obligation of restitution, neither under a grave fault, nor under a lesser fault. The reason is: not under a grave fault, because such an obligation is not proportionate to a lesser fault; not under a lesser fault, because a lesser obligation is not proportionate to a grave matter. (Thus reasons the most wise Cardinal Lugo, who in resolving doubts, has known how to investigate the intrinsic reasons, so that no one may be misled); all the more so because a fault that is not perfectly deliberate cannot induce a perfect obligation (3). 41. — It is questioned: 2. In contracts, is juridical fault sufficient to obligate someone to restitution, or to payment? Laym, Navarr, Molin, Vasquez, etc., probably affirm this, because the law of contracts obligates those who subject themselves to it. But Sotus, Tolet, Lessius, Lugo, Filliuc, Sa, Croix, Ronc, Salm, etc., not improbably deny this, saying that it is not just to obligate someone in conscience to a grave penalty, whenever it is not clear that he intended to subject himself solely to juridical fault. And the same is probably said by Sotus, Lessius, Lugo, Vasquez, Salmant, etc., regarding faults committed in the administration of offices (4). (1) Book 3, paragraph 549. — (2) Paragraphs 530 and 551; — (3) Paragraphs 552 and 553. — (4) Paragraphs 554 and 555.

[*Latin ed. p. 226*]

TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. POINT II. ON THOSE WHO ARE BOUND TO MAKE RESTITUTION. 42 and 43. Concerning those who cooperate, and I. of the one who commands. — 44. II. Of the one who gives counsel. — 45. In the case of doubt as to whether counsel was given, etc. — 46. If the executor was already determined. — 47. If counsel was given for the lesser damage. — 48. If the counsel is revoked. — 49. He who, through ignorance, gives counsel. — 50. III.

Of the one who gives unjust support. — 51. IV. Of the accomplice. — 52. V. Of the receiver. — 53. Whether he who buys from a thief can restore the thing to him. — 54. VI. Of the participant. — 55. If many set fire to a house. — 56 and 57. He who cooperates out of fear of his own damage. — 58. He who prevents one from preventing damage. — 59. VII. Of negative causes. — 60. Who among those who cooperate is first bound, and if the creditor remits to one his part, etc. — 61. He who prevents his neighbor from a just good, etc. — 62. He who prevents the tax collector from seizing what is due. — 63. He who prevents out of hatred, but without evil intentions. 42. — BESIDES those who are the principal offenders, who steal or damage another's property, all cooperators are bound to make restitution, if they are a contributing and effective cause of the damage, or if they are bound by justice to prevent the damage, and do not prevent it. These are included in the following verses: 1. Command, 2. Counsel. 3. Consent, 4. Accomplice, 5. Recourse, 6. Participant, 7. Silent one, who does not obstruct, nor reveal. 43. — And beginning with I. Command. He who commands is bound to make restitution, if he commanded that some damage be done, either by word or by gesture; but not he who merely approved of some damage that was done; nor if, before the command was given for execution, he revoked it, by signifying the revocation to the executor (1). 44. — II. Counsel. He who gives counsel concerning damage is also bound to make restitution; as also he who incites another to inflict damage, contrary to the proposition 39, which Innocent XI condemned, excusing him. Note here 1. Although the one who gives counsel is not bound to make restitution, he has not committed a very grave sin in giving bad counsel; nevertheless, afterwards, he is bound by justice to do as much as he can, without causing himself a very grave inconvenience, to prevent the damage, as he is also bound by justice to extinguish a fire, who, without his grave fault, sets fire to another's house; Sanch. Less. Viva, etc., commonly (2). Note 2. If the executor was already determined to inflict the damage, then the one who gave the counsel is not to be held liable, as commonly stated by Less. Mol. Vasq. Busemb. Viva, and others from St. Thomas (3), who teach that an injury without damage does not obligate to restitution: "If someone has suffered an injury," (these are the words of St. Doctor), "and not a damage, then no real restitution is to be made by law." However, it would be different if the executor was also moved by the counsel, because then the one who gave the counsel is already an effective cause of the damage (4). 45. — But it is doubted 1. Whether the one who gave counsel is bound to make restitution in the case of doubt as to whether his counsel was or was not the cause of the damage? Sylvest. P. Navar. Rebell. Henriq. Salm. Busemb. Elbel, Dicast. etc. deny it. And it seems that St. Thomas (5) is also of this opinion, who says that only the one who "can probably estimate" that the unjust reception following from such causes, is bound, and that it can be easily understood that the probability is for one side only, so that it constitutes a morally certain persuasion. The

reason of these Doctors is, because no obligation of certain restitution can be imposed on anyone, unless he is certain that he was the cause of the damage. On the contrary, Habert, Lugo, Sanchez, La- (1) Lib. 3. n. 557 and 558. — (2) N. 564. in fin. — (3) Opusc. 75. c. 20. — (4) L. 3. n. 561. (5) 2. s. q. 62. a. 7.

[*Latin ed. p. 227*]

OF THOSE WHO ARE BOUND TO RESTITUTE. 215. Croix, Ronc., etc., assert that in such a case, a fault and a presumption exist that the one giving the advice was the cause of the damage. Nevertheless, I do not consider the first opinion to be improbable, because, as the Angelic Doctor himself says in the passage cited, advice does not always produce its intended effect. P. Concina holds that the one giving the advice in such a case is liable in proportion to the doubt; but we object that no one can be burdened with a certain obligation if there was no certain cause of damage. However, if the advice given was already the cause of the damage, the giver is bound to make restitution, even if another had not given the same advice (1). This, however, which has been said concerning the giver of the advice, applies to any other collaborator in a case of doubt regarding their cooperation (2).

46. It is doubted: whether, when someone is already prepared to inflict damage, and you only suggest a method, or a time, e.g., with poison, and not with a sword, or today, and not tomorrow, etc., you are bound to make restitution? Cajetan, Molin, Viva, etc., affirm, because (as they say) the execution of the damage would have been uncertain without your advice, since the person could have changed their mind. But Lessius, Layman, Lugo, Holzmüller, and Sporer generally deny it, and Salm. with St. Antoninus, Navar., etc., are considered probable, because in such a case, the advice given is not an effective cause with regard to the substance of the damage: and they respond to the contrary argument that then the advice does not exist, but rather a wicked determination has already been made by the executor. However, I say that whenever there is doubt as to whether the executor changed their mind, or if the damage would not have occurred in the same way, the giver of the advice is bound to make restitution; for they possess a wicked intention that has already achieved its certain effect (3). Otherwise, if it is morally certain that the damage would have occurred even without their advice.

47. It is doubted: whether one who is prepared to inflict a greater damage can be persuaded to inflict a lesser one? We answer affirmatively, with Sanchez, Bonaventure, Busem, Viva, etc., provided that the damage is directed at the same person; but it is not permissible to suggest that damage (even if lesser) be inflicted on another particular person, nor (as I believe, with Sporer against Viva) in general to others, because then the advice also becomes the cause of damage to another (4).

48. It is doubted: whether the giver of the advice is relieved of the obliga-

tion if they revoke the advice before the damage occurs? The first opinion, which is the most common, with Lessius, Lugo, Habert, Croix, Holzmüller, and Sporer, distinguishes: if only simple advice was given, it is sufficient that it be revoked; but not if the method, or the motive for inflicting the damage, was also suggested. The reason is valid, because even if the advice is revoked, the motive and the method of causing damage always remain, just as one who applies fire to a house is liable for the damage, even if he tries to extinguish it. The second opinion, on the other hand, with Concina, Merbes, St. Antoninus, Azor, Navar., Salm., etc. (and it is called probable by Lessius, Layman, Bonaventure, Ronc., etc.), excuses the giver of the advice, always and if they try, in the best way possible, to dissuade the damage: at least by bringing forward the reason of eternal salvation, which must always prevail over any human reason. Nor does the analogy of fire constitute an objection (as they say), because fire acts necessarily, but when the advice is revoked, the damage no longer occurs as a result of its cause, but rather due to the malice of the executor: I cannot deny that this opinion is probable, at least by the authority of the Doctors on which it is based; but to me, the first opinion seems more probable. But in such a case (as Salm., Sporer, etc., point out), the giver of the advice is bound out of justice to warn the other, so that he may take care to avoid damage (3).

49. It is doubted: whether one is bound to make restitution who, out of ignorance (1) Lib. 3. n. 562. — (2) N. 575. — (3) N. 563. — (4) N. 565. — N. (5) 559.

[*Latin ed. p. 228*]

216 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE (but in a culpable manner), does he advise someone to do something that will cause harm to that person? It is answered, in accordance with Lessius, Layman, Holzmann, and Viva, that if someone gives advice in their profession, e.g., confessors, lawyers, etc., who are experts, then they are held accountable; otherwise, if they are considered ignorant, then they are not held accountable, because the consequence of the damage is attributed rather to the imprudence of the one who follows the advice, if that person was ignorant. It is understood that the advice was not given with malice or with the intention of causing harm, because in that case, the advisor is always held accountable (1). 50. — III. Consensus: It is understood that the one who gives an unjust vote or suffrage, and whose vote is the cause of damage, is held accountable. For those who are not the cause of the damage, although they sin, they are not held accountable for restitution, provided that, by common consent, they did not contribute to the unjust conclusion. However, it is asked what should be said when it is not certain whether the vote of each person was the cause of the damage? Some say that everyone is jointly liable; others, on the contrary, say that no one is liable for anything. But the true opinion, in accordance with Lugen, Molina, and Sporer, is that

everyone is liable for their share in repairing the damage; and if others do not restore, they are liable for the whole amount. This does not contradict what is said above in number 45, that one who cooperates is not liable when he does not know that he was the certain cause of the damage; because in our case, everyone who gives a vote, at least in the right they had to suffer damage in order to recover from the other voters the damage received, has done worse, and therefore everyone is liable for the entire damage, if others do not restore (2). 51. — IV. Palpation: It is understood as the flatterer who induces or adds to someone's mind the desire to cause harm to another, either by praising them or by reproaching their lack of virtue (3). 52. — V. Recourse: It is understood as the one who receives the stolen goods or hides them in a safe place. This person is liable to restore, always and whenever he is the cause of the theft being committed or facilitated; and thus, innkeepers are liable who receive stolen goods from servants or members of the family. But the innkeeper is not liable who, after the theft has been committed, helps the thief to escape; or who, out of his profession or friendship, receives the thief and the stolen goods, as commonly stated by the Councils and Salm, among others. However, it is understood, as Croix, Bus, and the Council rightly point out, that the innkeeper was not the cause of the thefts being committed (4). 53. — Here, the discussion turns to the very difficult question of whether a good-faith buyer of stolen goods can restore them to the thief, in order to recover his paid price? The first opinion (which is the most common) allows this, provided that no other means is available to recover the paid price. Thus, St. Antoninus, Lugo, Navarr, Lessius, Sylvester, Rebell, Soto, Holzmann, Salm, etc., say that the buyer does not cause harm to the owner by doing this, because he restores the thing in the same condition in which it was. The second opinion denies this, in accordance with Layman, Cajetan, Molina, Croix, Concina, etc., who want the thing to be restored to the owner, because, when it is freed from the hands of the thief, it is already in a better condition; therefore, by restoring it to the thief, one does not return it to its former state, but to a worse one. This opinion is very probable, but the first opinion is not entirely improbable; for Cardinal Lugo responds to the opposite argument: 1. That the buyer is not obliged to keep the thing for the owner when he suffers damage himself; if someone, he says, were to take another's garment which he finds, and then realize that keeping it would cause him damage, he could very well demand it back, even if he foresees that others will use it. (1) Book 3, number 564. — (2) Number 566. — (3) Number 567. — (4) Number 569.

[*Latin ed. p. 229*]

OF THOSE WHO ARE BOUND TO RESTITUTE. 217 2. A buyer (for this reason is the stronger position) who has the right to rescind a contract, cannot be denied the right to return the stolen goods; for such an action is

absolutely necessary to rescind the contract, and to recover his price, even if it incidentally causes damage to the owner (1). And as Tolet, Prad., Sylvest., Alens., Holzm., and others (and it is likely that Less., Lugo, and Bus. also say this), this applies even if the buyer acted in bad faith, because both the buyer acting in bad faith, and the buyer acting in good faith, have the same right to recover the price of the contract through rescission. And although he who acted in bad faith may have sinned in receiving the goods from the thief, nevertheless, neither for the acceptance of the goods, nor for the restitution of the goods, is there a cause of damage to the owner, since he already has the right to return them to him (2). Only an injury inflicted upon a neighbor obliges to restitution, because that is not the cause of damage, as stated in number 44, with St. Thomas (3). 54. - VI. Accomplice. An accomplice can be understood in two ways: either he who participates in the theft, and in this case he is bound only to return the portion that he received, provided that he was not the cause of the damage inflicted by others, because in that case he is bound to return the whole; or he is an accomplice to the action of theft, and on this point several questions arise. Question 1. Are all accomplices who contribute to the theft bound to restore the entire damage in solidum? It must be distinguished: if the thing is divisible, such as a vineyard, a pile of grain, etc., then the principal actor is bound to return the whole: the others are bound only to return their own portion, as Lugo, Less., Navarr., Bonac., Salmant., etc., say, even if they conspired together for the theft; provided (an exception must be made) that one does not instigate, or incite another to steal; and the same would be true if, without the cooperation of all, the theft would not have occurred; in that case, all are bound in solidum (5). Although in practice, it may be difficult for some to persuade themselves to return what was received from others, and conversely, in that case, they are presumed to be content with only the portion of each, for fear that they would receive nothing if they were forced to return the whole. Hence, a confessor should urge each of these (especially if they are not very scrupulous) to return what they owe, without explaining the amount, but leaving the decision to their conscience (4). 55. - But a greater doubt arises when the thing is indivisible; for example, when many people set fire to a house, a ship, etc., are all bound to restore the entire damage in solidum? Many, probably, affirm, as Sotos, Sanch., Cajet., Roncagl., Salmant., etc., say, because in that case, each is the moral cause of the entire damage. But it is also probably denied by Sotos, Sylvest., Navarr., Lugo, Sporer, and others, who say that each of these is bound only to return his own portion; because just as he who contributes to a portion of the damage, even though he contributed with others to the entire damage, is not bound to return anything except his own portion, in proportion to the portion of the thing that was damaged; so too, he who contributes to a portion of an indivisible damage, is bound only to that portion because of the partial causality, or the partial influence that

he exerts on that thing. But this must be understood, provided that without his contribution, the damage would not have occurred; because if, if one of those cooperating were lacking, the damage would not have occurred, as stated above, then all are bound to return the whole (5). 56. - It is doubted 2. whether he who, induced by a serious fear of damage, cooperates in the damage to another, is excused from sin and from restitution? Doctors have spoken very confusedly on this question, and it seems to me, due to my own weakness, that I have not touched the point with proper methods.

[*Latin ed. p. 230*]

218 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. Some, like Sanchez, Lessius, and Bussem, excuse those who cooperate in such actions. Others condemn them if their action directly leads to harm, such as breaking a chest, taking things out of a house, and the like; they excuse it if the action is remote, such as holding a ladder for a thief, handing over keys, or transporting stolen goods; thus Bonaventure, Spotorius, Holzmüller, and the theologians of Salamanca. However, the Salmanticenses elsewhere state that even these remote actions are intrinsically evil, because they all (they say) cooperate in the unjust action of the thief, and therefore they condemn the one who cooperates as being guilty of sin and liable for restitution. In my work on Morality, I distinguished this point in a different way, saying that the action of the one who cooperates must be considered differently with regard to the damage to the owner, and differently with regard to the sin of the thief. With regard to the damage, I said that no one can cooperate in causing damage to another in order to free themselves from their own, when the damage is of the same order. For example, one cannot be held liable for refusing to give a sword to someone who wants to kill an unjust person; because I cannot, in order to protect myself from death, positively cooperate in the death of my neighbor (1). On the other hand, if my own damage were of a higher order, then I can cooperate in damaging another's property in order to avoid death or disgrace; because then, being in extreme necessity, it would be unreasonable to expect others to oppose my cooperation (2). 57. — With regard to the sin of the thief, I said, following the authors of the first opinion, that I can safely perform actions of both the first and second kinds, as mentioned above, in order to avoid damage to my life or reputation; because they are truly purely material, and are all indifferent in themselves, since they can all be performed without sin; and although the thief abuses them for an evil end, I do not sin; and therefore, I am all the less obliged to make restitution, because I perform them for a just cause, as stated in tract. 4, nos. 31 and 32, when speaking of material cooperation; and so also thinks Father Molina, who says that it is permissible to receive the goods of Christians by force, under the threat of death, because (as he argues) they are necessary for the preservation of their lives. Similarly,

Concina and Tournel say: "I am not obliged to suffer a great loss in order to prevent another's sin." Likewise, the learned Father Milante says: "One cooperates innocently who complies out of fear." If it were ever intrinsically evil to hand over keys to a thief, because then I would be cooperating in his sin, I could indeed hand over the keys to my house in order to save my life; but who would ever think of such a thing? Therefore, those actions are only intrinsically evil that increase or confirm the thief's evil will; such as helping him to climb, making him more certain of the time, or making it easier for him to carry out the theft, because such actions are formally influencing the thief's will, and therefore are never permissible out of fear. Thus, I have distinguished the point, discussing it according to its principles, and I believe that it cannot be said otherwise; but I submit this to those who are wiser. Note the cited passage (3). 58. — It is doubted (4) whether one is obliged to make restitution who prevents another from averting the damage to his neighbor? Navarr and Medina generally affirm; but we distinguish, as do Lugat, Lessius, Molinet, and Croix, as follows: If he prevents by force or fraud, he is obliged; otherwise, if only by counsel or prayer, because then he sins against charity, but not against justice. (1) Lib. 3, no. 697, see Teneris. — (2) No. 571, see Secunda. — (3) No. 571, see Participantes.

[*Latin ed. p. 231*]

OF THOSE WHO ARE BOUND TO RESTITUTE. 219. However, it is understood that another person is not bound by justice to prevent that damage (1). 59.—VII. Silent; not obstructing, not revealing. Those are understood to be the negative causes, namely, those who, when they could prevent another's damage by speaking or by revealing the guilty party, and when they ought to do so by a pact or duty, neglect to do so. Such are princes, magistrates, military leaders, guardians, administrators of the Church, guards, servants, and slaves (2); but slaves only with regard to damage caused to outsiders, as we said in section 7, number 8. Whether a confessor is bound to make restitution, who does not obligate the penitent to do so, as he ought, see what is said in volume 2, treatise 16, on the Sacrament of Penance, number 122. 60.—It should be noted that among those who cooperate, the following are bound to make restitution: 1. the one who retains the thing; 2. the one who commands, if the thing does not exist; 3. the executor; 4. all other positive causes, such as an advisor, a participant, etc.; 5. all negative causes (3). It should be noted that if the creditor remits restitution to the principal debtor, he is considered to remit it also to lesser debtors. Furthermore, if the creditor promises someone among the principal debtors that he will not trouble him, he is considered to have remitted that portion of the debt; otherwise, if the creditor were to demand the entire debt from the others, the promise would be void, because the others would force him to contribute that portion which he owed to the

creditor (4). 61.—Besides those who cooperate, those are bound to make restitution who prevent another from obtaining a just benefit. But in this, a distinction must be made: if the thing was owed to him by right, then, whatever way he prevents him, he is bound to make restitution. However, if it was not owed to him by right, then he is bound only if he prevents him from obtaining the thing by force or fraud; for although the neighbor may not have had a right to the thing, nevertheless, everyone has a right not to be prevented by wrongful means from obtaining something to which he is not positively undeserving. And the same is said by Salmanticus, if he prevents him by importunate prayers or by reverential fear (5). And then restitution must be made according to the degree of hope that the neighbor had in obtaining that good (6). 62.—But it is asked: 1. Is he bound to make restitution who, by wrongful means, prevents something from being applied to the treasury? I answer, with Lessius, Sanchez, Lugo, Azor, Salmanticus, and others, that he is bound after a sentence, but not before, since the treasury does not acquire the right to punishment except after a sentence. At least, as Lugo says, this right of the treasury to punishment has been commonly received (7). 63.—It is asked: 2. Is he bound to make restitution who, out of hatred, but without wrongful means, prevents another from obtaining a good, which otherwise was not justly owed to him? Some affirm, as Lugo, Cuijet, Salmanticus, etc., say, that in such a case, an unjust action makes the intention itself unjust. But others, more probably, and commonly deny it, as Lessius, Petrocorus, Castres, Navarrus, Vasquez, Soto, Laym, Molina, Bonaventure, Sanchez, Roncaglia, Holzmuller, and many others. The reason is that the obligation of restitution requires not only a bad will, but also a more serious external action, which externally violates the neighbor's right and affects his damage; otherwise, the malevolent person will sin against charity, but not against justice (8). Hence, it is inferred that one is not bound to make restitution who, out of hatred for his own (1) Book 3, number 572. — (2) Ibid. Number 573. — (3) Number 590. — (4) Number 581. — (5) Number 582. — (6) Number 587. — (7) Number 585. — (8) Number 584.

[*Latin ed. p. 232*]

220 TRACT. X. ON THE SEVENTH COMMANDMENT. It is forbidden to dissuade (but without deceit or force) a witness from testifying against one who would inherit, or a bishop from conferring a benefice; this refers to a simple benefice, for otherwise it would be necessary to speak of a curate, since (according to the more probable opinion) the bishop is bound by justice to confer the benefice on the more worthy candidate; after due deliberation has been made (1). Note what we say in tr. 13, n. 37. POINT III. TO WHOM RESTITUTION MUST BE MADE. 64 and 65. If the goods are certain, and the owner is far away. — 66. If the owner claims the item from the hands of your buyer. — 67. If the goods are uncertain. — 68. Concerning

compensation. — 69. Concerning goods found. — 70. Concerning treasures. — 71. Concerning wild animals captured while hunting. — 72. What hunting is prohibited for clerics and religious. 64. — CERTAIN goods must be distinguished from uncertain goods: goods are called uncertain when the owner is uncertain. Therefore, if the owner is certain, the goods must undoubtedly be returned to him; provided that they were not received from the hands of a just possessor, e.g., a steward, custodian, etc., for then restitution must be made to them, not to the owner; unless there is reason to believe that they would abuse the item to the detriment of the owner (2). 65. — It is doubted: if the owner is far away, whose expenses should be borne for the item to reach his hands? If the item was received in good faith, the expenses should be borne by the owner; but if in bad faith, by the thief. But it is asked: to what extent is the thief obligated? Some hold that he is obligated for all expenses; others only for those that equal the value of the theft; but the opinion that seems more probable to me, along with Moller, Sporer, and Tambur, is that the thief must be held responsible for ensuring that the item reaches the owner's hands, even if the expenses exceed the debt; and as Lugo says, even if the expenses would be twice as much. But if the expenses exceed this amount, then the common opinion holds that he is only obligated to return the excess to the poor; this is understood with the condition that it is impossible to return the item or its price to the owner at another time, because otherwise, it must be awaited, and it may even be possible to postpone the restitution, as Lugo, Lessius, Bonacini, etc., say, if doing so would cause him serious harm; provided that the owner would not suffer similar harm from the delay of the restitution, as Lessius, Navarrus, Tambur, Lugo, etc., commonly say; since the harm that the owner suffers due to the theft, the thief is always obligated to make amends for (3). 66. — It is doubted: if you bought something in good faith from someone, and you sell it in good faith to another, and then the true owner appears, to what are you obligated? It must be distinguished: if the owner claims his item from the hands of your buyer, then Lessius, Sotus, Bonacini, Castrop, Busembach, etc., rightly say that you are obligated to return the price received to the buyer, even if you had agreed with him that you would not be obligated to compensate him for eviction, as is expressed in L. Emptorem, § Autem. ff. Act. empt., because it is not just that the seller should profit at the expense of the buyer. However, in three cases, the buyer cannot recover the price. 1. if you expressly agreed not to return even the price; 2. if you did not become richer from that sale, e.g., if you consumed the price in good faith by making donations, etc.; 3. If the buyer bought in bad faith from you, knowing that the item was not his; for then, as punishment for his fault (as long as you did not expressly warn him of the eviction), he cannot claim his price, as is stated in L. Si fundum, cod. de evict., Lib. 3, n. 585, and L. 4, n. 108. — (2) Lib. 3, n. 596. — (3) N. 597

and 598.

[*Latin ed. p. 233*]

TO WHOM RESTITUTION MUST BE MADE. 221 But, as Castres observes, you may not even be able to retain the price, because, before judgment, you are obligated to restore to the buyer, and to the treasury after judgment. However, if the property has not been taken from the owner, but remains in the hands of the buyer, you are obligated to nothing, as Lessius and Salm say, because then you are no longer the cause by which the owner is deprived of his property; nor are you obligated to take action, to the detriment of yourself, to ensure that the owner recovers it (1). 67. — This applies if the owner of the property is certain. If, however, the owner is uncertain, it is still necessary to distinguish and determine whether the property was received in good faith or bad faith. If the property was received in bad faith, it is necessary to make a further distinction. If the owner of the property is only uncertain in particular, as when it is known that the property belongs to one of three or four people in a certain place, then it cannot be given to the poor, but the property must be divided among those who are considered to have been defrauded; so say Silvius, Lessius, Castres, with Navar, Cajetan, Molin, and Rebellio (2). If, however, the owner is unknown even in general, so that no distinction can be made between the people of that place to whom the property belongs, then it can properly be distributed to the poor, as prescribed in chapter "Concerning Usury." And then it is sufficient to give it to the poor of any place, or to any pious works. However, it is understood that this applies when all due diligence has already been exercised to find the rightful owners; otherwise, if the property is restored to the poor before due diligence, and then the owners appear, they are always entitled to compensation for the damage (3). Furthermore, it is understood that this applies only when there have been few people who have suffered damage, namely three or four, so that, if it is distributed in that place, it is likely that the property has not reached its rightful owners, as commonly taught by Silvius, Bonacini, Navar, Castres, and Salm (4), with Soto, Tapia, and Rebellio. And although Silvius, in loc. cit. conc. 4, says that it is more appropriate that, in that case, the restitution be made to the poor of the place where the property was taken, nevertheless he himself adds that this is not necessary with Silvestro. If, however, damage had been caused to many and different owners of a university, then it must certainly be restored to the inhabitants of that same university, as will be said shortly, and more distinctly in number 28. 68. — It should be noted here that a settlement can be made regarding uncertain debts, but this cannot be done with a bishop, but with the Pope (or the Penitentiary), as Lugo, Molin, Turreano, etc., rightly say, against some; and it is understood when there is a just cause (5), and when the owner is completely unknown; therefore, Soto and Henry rightly say that a settlement is not permitted

when restitution is made to the poor because of the owner's absence, as said in number 66 (6); nor is it permitted when restitution must be made for minor thefts by those who sell wine, oil, etc., because it must necessarily be given to the poor of that place; indeed, according to the common opinion of Layman, Concina, Salm, Diana, Spor, Croix, etc., it is not sufficient to give it to the poor of that place, as Vasquez, Anacl, Escob, with St. Thomas, admit; but it must be given to the very citizens who are accustomed to frequent the tavern; although, as we said in number 28, if it is given to the poor, no sin is committed (7). But here, there is doubt as to whether the debtor remains free from all obligation, even if the owner is present, (1) Lib. 3, n. 601 and n. 800. — (2) Silvius, t. 3, in 2, 2, q. 62, art. 5, q. 1, concl. 2. Lessius, lib. 2, de just., c. 14, n. 52. Castres, part. 5, tr. 52, D. 1, p. 15, 2, 8, n. 5, with P. Navar, Cajetan, Molin, and Rebellio. — (3) See our work, Lib. 3, n. 589 and 596, ad 5. — (4) Silvestro, verb. Restitutio, 8, q. 3. Bonacini, t. 2, de rest. in gen., D. 1, q. 3, p. 4, n. 10. Castres, loc. cit., n. 2, with P. Navar, Salm, tr. 15, de rest., c. 1, n. 215, with Soto, Tapia, and Rebellio. — (5) Lib. 3, n. 591. — (6) N. 594. — (7) N. 595.

[*Latin ed. p. 234*]

222 TRACT. X. CONCERNING THE SEVENTH COMMANDMENT: Has a composition already been made? Some deny this, saying that it is only valid if the person has become richer through it; but Lugo, the theologians of Salamanca, and others commonly affirm this. Trullench, Tap. etc., because in that case, the Pontiff, as administrator of temporal goods insofar as it pertains to spiritual good, can certainly transfer ownership and remove all obligation (1). 69. — This applies when the received thing is of bad quality; but if it is received in good faith, for example, if someone finds a ring in the street, or receives more than they are owed by mistake, and does not know to whom they should return it, is it permissible for them to keep it? Sotos, Sa, Nav. etc. affirm that this is permissible, provided that due diligence is exercised, for, as they say, abandoned things belong to the first occupier. But Lessius, Laym, Castres, etc. deny this, saying that the thing or its price should be applied to pious uses, since it is presumed to be the will of the owner. We, along with Lugo, Croia, and Holzmüller, make this distinction: if the owner cannot be found at all, then it can be kept; because in that case, the thing is considered abandoned, and ownership of it is acquired by the first occupier. However, if even after due diligence, there is some hope of finding the owner, then the thing, or its price, must be kept for him; and if neither can be preserved, it must be distributed to the poor, because as long as such hope remains, ownership remains with the owner (2). And St. Thomas holds this opinion (3), saying: "If (something) is considered abandoned, then the finder may believe that he may keep it without committing theft." And the same must be said of the poor person to whom a thief gave stolen goods, if the owner is

not found; for if there was no hope of finding him, then ownership has passed to the poor person, so that he is not obligated to return the thing to the owner, even if the owner later appears (4). 70. — Furthermore, to whom do the discovered treasures belong? I say: 1. By common law, if the finder finds the treasure on his own property, the treasure is his. 2. If it is found on another's property, then if it is found by chance, it must be divided between the owner of the land and the finder, who is obligated in conscience to give half to the owner, as commonly stated by Lugo, Lessius, Castres, Laym, Salamanca, etc.; but if it is found through diligence, the entire treasure must be returned to the owner, as stated in the law of the unique code, chapter on treasures. 3. If the treasure is found in a public or sacred place, it must be divided between the finder and the treasury, or the bishop. 4. Finally, if the treasure is found through magic, the entire treasure belongs to the treasury, but not until the judgment of a judge. This is according to common law; but according to the law of our kingdom, if it is found in a public place and not through one's own efforts, the entire amount is owed to the treasury; if it is found on private property and by chance, one-third belongs to the treasury, one-third to the finder, and one-third to the owner of the property (5). 71. — Furthermore, to whom do the wild animals belong that are caught in the hunt? If a wild animal is wounded by one person and caught by another, it belongs to the one who caught it, unless it had escaped; in which case, it must be divided. However, those caught in nets belong to the one who set them (6). If, however, someone catches a wild animal in a reserved forest (which can be reserved by the prince, or by someone with a privilege), Lessius says that he commits mortal sin, and is obligated to return the price to the prince, because of the hope that the prince had of being able to profit from it; but Sotos, Molinius, etc. allow this only in the case where the place is enclosed; and Lessius completely denies this, because a penalty has been imposed there besides the prohibition of hunting (7). (1) Book 3, no. 593. — (2) No. 603. — (3) 2-2, question 66, article 5, ad 2. — (4) Book 3, no. 590. — (5) No. 602. — (6) No. 604. — (7) No. 605.

[*Latin ed. p. 235*]

WHAT MUST BE RESTITUTED, etc. 223 72. — It must be noted here that not all forms of hunting are forbidden to clerics, but only clamorous hunting, that is, hunting with noise, using dogs or birds of prey. And Lessius, Castrop, and Rebellius state that even clamorous hunting is not forbidden under a grave penalty, unless it is frequent or done with scandal, or with great expense. Others add (as Molinius, Cajetan, Sa, Sporer, etc.) that it should never be considered a mortal sin, provided there is no scandal, for a cleric simply because of hunting: for in the text of chapter 1 on clerical hunting, it is not forbidden, except by the imposition of a penance. Indeed, Laym, Lessius, Valentia, and Sa hold that it is permissible if it is rare and

moderate, and if it is done for necessity or exercise. From this, the learned author of the book entitled "Instructions for New Confessors" concludes that clamorous hunting is entirely permissible for recreation; and that clamorous hunting is not a mortal sin, unless contempt and stubbornness are present. For religious, clamorous hunting is more strictly forbidden, according to Clementine, book 1, § Pórro, on the status of religious. But Castrop says that it is not even a mortal sin, unless there is scandal; at least, Salmanticenses say that if it is practiced three or four times a year without great noise (1).

POINT IV. WHAT MUST BE RESTITUTED BY A POSSESSOR IN GOOD FAITH, AND WHAT MUST BE RESTITUTED BY A POSSESSOR IN BAD FAITH. 73. Concerning the possessor in good faith. — 74. Concerning natural, civil, mixed, and industrial fruits. — 75. He who receives from a thief a mixed thing along with his own. — 76. He who inflicts a loss estimated as less than the value. — 77. Concerning the possessor in bad faith. — 78. What if the thing grows, or has grown in price, and concerning expenses incurred by the thief, and concerning him who feigns poverty. — 79. If the thing also perishes with the owner. — 80. He who buys with doubt. — 81. He who defrauds the taxes. 73. — SPEAKING of the possessor in good faith, namely, he who has only inflicted a material injury on the owner (an injury is said to be material if it lacks guilt, and formal if it has guilt), he is only obliged to restore the thing if it exists, or if he has mixed it with his own, only to the extent that he has become richer; thus, if he has consumed a garment belonging to another, he is obliged to restore the value that he would have spent to have it made for himself (2). But if there is doubt whether he has become richer, he is not obliged to restore anything, as Sanch, Croix, and others say, because in doubt, no one is obliged to deprive himself of his own (3). Some Doctors say that he who receives money from a thief in good faith is not obliged to restore it to the owner, even if it exists; but this opinion seems somewhat probable, because the ownership of the money in specie belongs to the owner, just as it does for all other things (4). As for what the possessor in good faith is obliged to restore when there is doubt that cannot be clarified, see what is said in section 1, number 20. 74. — Furthermore, the possessor must not only restore the thing, but also the fruits derived from it. But here it is necessary to distinguish between natural fruits, civil fruits, mixed fruits, and industrial fruits. Natural fruits are those that are produced solely by nature, such as pastures, the offspring of animals, and the like. Civil fruits are those that are derived from the lease of land or livestock, and also from clothing, etc., as is to be held against Laym. Mixed fruits are those that are obtained partly from nature and partly from industry, such as oil, wine, cheese, etc. Industrial fruits are finally those that are acquired solely by industry, such as the profit derived from money invested in business, or from improvements made to a property. The natural fruits - (1) Book 3, number 606. — (2) Numbers

607 and 608. — (3) Number 706. — (4) Cited in number 608. See.

[*Latin ed. p. 236*]

224 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. Natural and civil obligations must be fully satisfied (expenses deducted), both by the possessor acting in good faith and by the possessor acting in bad faith; with this difference: the possessor acting in good faith is not obligated if he has received nothing, or if he has consumed the goods in good faith and has not thereby become richer, or if he has prescribed the possession after three years with a title, or thirty years without a title, as already stated in n. 10. But the possessor acting in bad faith must always fully restore the aforementioned fruits, even if he has not received them, if the owner would already have received them if the goods had been in his possession; and even if the owner would not have received them, he is still obligated to restore them when he himself has received them, because the thing always accrues fruit to the owner. Mixed fruits must be restored according to the same rule, namely, whether the possessor acted in good faith or in bad faith; but it should be noted that these aforementioned fruits do not have to be restored with the expenses deducted, and the value of labor, as some say; but, as Molinius, the Dicasterium, and Croix, among others, better state (1), only the value corresponding to the nature of the fruit must be restored, because the value corresponding to the possessor's labor is entirely due to him (2).

75. — Question 1: Is one obligated to restore to the owner money, grain, or similar things that one has received from a thief, after the thief has committed acts with his own? One is not obligated if the thief remains capable of restitution, since what one has received (even in bad faith) has already become the thief's property. However, if the thief is returned, unable to make restitution, then one is obligated, because by that acceptance, one has caused damage to the owner; and thus it must be held with Sanchez, Tamburrini, and others in common, whatever some may say (3).

76. — Question 2: To what extent is one obligated who throws a foreign gem, valued at 10, into the sea, if it was worth 100? Some, with Lugo, obligate to the full amount, saying that he who unjustly inflicts damage on his neighbor with grave fault is obligated to the entire damage, even if it was overlooked. Others, however, more commonly, with Pontius, Exparsa, Holzmüller, Croix, Dicastilla, Dian, Mazzotta, etc., and more probably, say that one is only obligated to the 10. The reason is that the obligation of restitution corresponds to the fault, and the fault corresponds to the injury intended to be inflicted on the neighbor. Therefore, just as when the fault is light, there is no serious obligation to restore (as Lugo himself admits), so when the fault is less, the obligation of restitution should also be less. The objection to this reasoning is that the one who causes damage is obligated to the entire damage culpably caused, at least in a confused manner (as is

generally understood); but not when the damage is entirely and invincibly ignored, as Salm, Holzmüller, Mazzola, and others commonly point out (4).

77. — Speaking of the possessor acting in bad faith, he is obligated not only to restore the existing thing, and all that in which he has become enriched, but also to the entire detriment caused to the owner due to the damage suffered or the profit lost, at least in a confused manner, as we said before. This, however, is understood when the owner had full right in the thing; for if he had only a right to the thing, then he must only be satisfied for the value of the hope he had of making use of it (5).

78. — It should be noted that if a thing taken unjustly increases in price during the time it is unjustly retained, the increase belongs to the owner; and this applies even if the owner would have consumed it before the increase, unless it had been taken from him; therefore, if the owner had sold a field when it was worth five, and the thief consumed it when it was worth ten, ten must be restored, not five, as Lugo, Castrop, Roncaglia, Salamanca, etc., say (1) Lib. 5, n. 825. (2) N. 610. (3) N. 612. (4) N. 615. (5) N. 614.

[*Latin ed. p. 237*]

WHAT MUST BE RESTITUTED, etc. 225 versus others; because all things always profit the Lord. However, Concina states that if a sheep increases in value to ten, and then decreases in value to five, only five should be restored, because then the loss is only five; and I adhered to this opinion in moral matters (1); but now it seems to me entirely improbable, because if the value has now increased to ten for the benefit of the Lord, and if the thief does not restore the sheep, then the loss is not five, but ten, and the thief's culpable delay was the cause of the loss. It is very probable, indeed, it seems more probable to me, what Less, Molin, Croix, etc., commonly say against (Sot. and others), namely, that if anyone kills another's sheep while it was worth five, it is sufficient to restore only five to the Lord, even if the sheep would have increased in price later, and the Lord would have been able to buy another similar sheep as often as the Lord, having received those five, could buy another similar sheep without inconvenience (2). Note 2. According to L. Adeo, § 7. Ex diverso. ff. de Acquis. domin., the possessor in bad faith is not entitled to claim expenses incurred in the thing; therefore, Sanch. (and Lugo calls the opinion safe) says that the Lord can lawfully retain them. But Less, Castr, Navar, and Lugo themselves call the opposite opinion more probable, because the aforementioned law (as a penal one) does not obligate except after a judge's sentence (3). Note 3. He who feigns poverty is obliged to restore the alms (unless it was a small amount) either to the Lord, as Molin says, or to other poor people, as Castrop says (4). 79.—Is the thief obliged to restore the price of the lost thing, if it also perished with the Lord? It must be distinguished: if the thing perished without the thief's fault, and at

the same time and with the same peril (e.g., in the same fire in which it perished), it would have already perished with the Lord, then it is certain, as all say, that he is obliged to nothing; because in that case, the theft is not the cause of the damage, and the injury alone (as stated in no. 44) does not create an obligation to restore. On the contrary, if the thing perished because of the thief's fault or the fault of another, before the common peril, it is certain that the thief is obliged to restore it, because the peril that subsequently arises does not exempt him from the obligation already contracted. Although, if he consumed the thing at the same time that the imminent ruin was foreseen, Less, Lugo, Vasq, Sporer, and Layman probably excuse him. But a greater doubt remains, what if, after the common peril has passed, the thing perishes in another peril; Castrop, Less, Salmant say that the possessor is then obliged to restore, considering his culpable delay in restoring. But if the second peril was also common, so that the thing also perished with the Lord, Croix probably excuses him, because then it was not the delay, but the peril that was the cause of the damage (5). Whether the thief is obliged to restore, if he consumes the thing after he has fallen into extreme necessity, see what is said in no. 19. 80.—Is the buyer obliged to restore the thing to the seller from whom he bought it with a doubt as to whether it belonged to him, and then, after using due diligence, he could not ascertain the truth? Some say that he is obliged to restore it, either to him to whom he doubts the thing belongs, or to the poor. But it is more common and more probable that Castrop, Lugo, Less, and Salm say that the doubt should be divided proportionately; for on the one hand, the whole cannot be retained; since the possession, begun with doubtful faith, benefits him in nothing; on the other hand, it is not right to obligate him to restore the whole, when it is doubtful whether the thing is alien or his own (6). (1) Lib. 5. n. 6ax. — (2) Cit. n. 6ax. v. Quid, si. — (3) N. 6r8. — (4) N. 6ax. — (5) N. 6ax. v. Pro majori. — (6) N. 6ax. 15

[*Latin ed. p. 238*]

TRACTATE X. ON THE SEVENTH PRECEPTS OF THE DECALOGUE. 81. — Here, the question is raised: 3. Is one who evades taxes obligated to make restitution? The most common opinion, to which I adhere in my moral work, affirms this; because, just as the king is obligated to consider the welfare of his people, so the people are obligated to provide him with support, as Molin, Suar, Sanch, Croix, and many others state. This is supported by the text of the Apostle: "Render therefore to all men their dues. Tribute, to whom tribute is due: custom, to whom custom: fear, to whom fear: honour, to whom honour." Romans 13. Others, however, deny this, arguing that a penalty is attached, as Navar, Beja, Sa, Duald, Malder, etc., state, saying that although subjects are obligated to provide their prince with due support, and although the prince may even obligate them to do so under penalty, it is not presumed that he intends to obligate them to

incur penalty whenever he adds a great penalty for his own benefit, and the subjects submit to this. Furthermore, according to the opinion that a mixed law obligates both to penalty and to payment, they say that, once a law is established that prescribes a penalty, it can be said that the one who evades taxes is sinning, especially if, after the confiscation of his goods, he refuses to pay the penalty, or if he seeks to compensate himself for it; in this case, the law seems to be disjunctive, namely, that either the tax or the penalty must be paid, as Sanch states with Salon, Cordub, and others. At least, they say that there is doubt as to whether this law binds to both; and in doubt, there is no certain obligation. Nevertheless, despite this, I do not omit to advise the first opinion (1). Furthermore, Sanch, with St. Anton, Gabriel, etc., excuse those who use goods for their own use, or for the family, provided that a tax is not expressly imposed on them, as is deduced from the law of the Universal, chapter on Taxes, or because the payment for goods destined for personal use has not yet been introduced by custom. Furthermore, Sylvest, Lug, Less, etc., excuse the poor, if their poverty is such that, by paying taxes, they would be unable to support themselves and their families (2).

POINT V. WHAT MUST BE RESTITUTED FOR MURDER. 82. — What must a murderer restore.

83. — If due to an offense against life, reputation, etc.

84. — If one kills another for another, is he obligated to restore.

85. — And is he subject to excommunication, or irregularity.

86. — If he obtained remission from the deceased, is he obligated to restore to the children.

87. — What must be restored to the heirs of the deceased; and what if their loss, or the loss of a creditor, is intended.

88. — If the murder is imputed to a third party.

89. — If one kills exceeding just defense.

90. — Are heretics subject to penalties for damages. 82. — A MURDERER is obligated to restore all damages caused to the goods of the deceased, both for expenses of healing (but not for funeral expenses), and for the loss of profit resulting from the expectation that the deceased could have acquired. It is not understood from this that the aforementioned damages have been remitted to the one convicted, although they are presumed to have been remitted if they are not demanded in that case (3). Some say that the price of labor that the deceased would have expended should be deducted from the restitution of lost profits. Others, however, deny this. Bonac states that only what the deceased would have likely given should be deducted, so that he would be excused from such labor (4).

83. — It is doubted 1. whether, besides the aforementioned damages, the offender is obligated to compensate for the offense caused to the life

or reputation of another with money? Sotus, Cajet, Sylvest, etc., affirm this, saying that if one cannot restore everything, he is obligated to restore at least a part; and they follow the teaching of St. Thomas (5).

(1) Book 3, no. 616. Question III, where other doubts on this matter are discussed.

(2) Cited above, see if other poor people.

(3) No. 361, ad 10.

(4) No. 659.

(5) Summa Summae, question 62, article 3, ad r.

[*Latin ed. p. 239*]

WHAT MUST BE RESTITUTED FOR HOMICIDE. 227 states: "When someone takes away a limb from another, he must compensate him, either in money, or in some honor." Nevertheless, the opposite opinion is more probable and common, and is held by Less, Lugo, Bonacin, Laym, Sanch, Salm, and many others; and P. Concina calls it probable (which, in his sense, means the same as morally certain, or at least highly probable, so that the opposite is not sufficiently probable). The reason is that commutative justice obliges one to make restitution for the equality of the damage caused; but where the damage is of a different order than satisfaction, no equality can be given, neither in whole nor in part; therefore, there is no obligation to compensate for injury to goods, life, or reputation, which are of a higher order. This is proven from Scripture, where it is written: "The striker shall be innocent, so that he may restore his works and expenses in physicians;" and thus, after the damages are satisfied, the striker remains innocent: that is, (as Lugo rightly says), he remains free from all other obligations. It is also proven from l. fin. ff. de his qui effud., etc.; from which it is said: "But a scar, or any deformity, is not assessed, because a free body receives no assessment (1)." 84. - It is doubted 2. whether he who, intending to kill an enemy, unintentionally kills a friend, is obliged to make restitution. This question is similar to whether one is obliged to restore the damage caused to one who, intending to set fire to the house of an enemy, sets fire to the house of a friend. Some affirm, as Bonac. and Busemb., saying that every action contrary to justice obliges one to make restitution; but that error in the lord of the house is about the quality, not the substance, and therefore does not excuse from restitution. However, other doctors, such as Lugo, Mol, Sporer, Croix, Leand, (and with the most learned and illustrious Master Torni), deny that this is always the case, unless he intends to set fire to the house of an enemy, but not that of a friend; for, in order to make restitution for the damage caused, it is not enough that the action be materially unjust or injurious, but it must be formally, that is, voluntarily injurious, with the intention of causing harm. Therefore, if I unintentionally harm a friend, I do not inflict a formal injury, and therefore the error is

about the substance, not the quality, since the entire obligation to make restitution arises from the injury. The same reason applies to homicide, as Filliuc, Tambur, and Leand say. The same is said of theft by Mol, Lugo, and Spor, e.g., if someone takes something thinking he is taking it from his enemy, but in reality takes it from a friend, and consumes it, he (according to them) is not obliged to make restitution; but with regard to theft, Sanch rightly contradicts this, because this is the difference between theft and damage: in theft, the intention is primarily unjust gain, and secondarily the injury to the owner; but in damage, the intention is primarily the injury to the owner, and secondarily the damage caused; therefore, in damage, an error of person is about the substance, while in theft it is about the quality (2). 85. - It is asked 3. whether excommunication is incurred by one who, intending to strike one cleric, strikes another? Concina, Diana, and Suar deny this, because the injury with respect to the other is involuntary. But it seems to me that the common opinion of Molin, Sanch, Bonac, and Viva is absolutely more probable, who affirm that excommunication is incurred not because of the person, but because of the violation of the status, which status is already violated in this case, even if there is an error in the person. Therefore, the striker will still be excused from making restitution for the damage caused to the person, as was said in the previous doubt, because there was no (1) Lib. 3, n. 627. - (2) N. 629.

[*Latin ed. p. 240*]

228 TRACT. X. ON THE SEVENTH PRECEPTS OF THE DECALOGUE: injury done voluntarily to a person; not, however, by excommunication (1). And he will be excused from irregularity all the less, as rightly say Sanchez, Covarrubias, Ledo, Vega, against Filicucci, Sporer, Tamburini, etc., because irregularity is imposed for any kind of homicide, and he who kills one for another, although he errs in the person, does not err in the crime, since he is already killing a man. Another case would be if someone had ordered the death of an enemy, and the executor killed another, as is reported to have been declared by the Holy See. For then the homicide, with respect to the other, is entirely involuntary, both as regards the person and as regards that very crime; since that homicide occurs not because of the order, but because of the error of the executor (2). 86. — It is doubted (4) whether the killer, having obtained remission of damages from the injured party before his death, is nevertheless bound to restore them to the children of the deceased? Lugo and La Croix affirm, saying that the father cannot prejudice the rights of his children in what they have over his goods. But commonly, Soto, Sanchez, Bonacina, Salm, Busembach, etc., deny this, because the children are not injured unless they are prejudiced in the father's goods against his will; therefore, just as they acquire the right through the father, so too they lose it through him. Although it would not be beneficial for the father to remit those damages to the detriment of his

children (3). 87. — It is asked (5) what the murderer must restore to the heirs of the deceased? He must restore to the non-heirs all debts contracted with the deceased before his death, that is (as was said at the beginning), all expenses incurred in his care, and the profits lost during his illness. But to the necessary heirs, such as children, parents, and spouse, he is bound to restore more, namely the profit (according to its value) that the deceased would likely have earned; thus, commonly, Soto, Sanchez, Navarre, with St. Thomas, etc. Nevertheless, La Croix rightly says that this does not apply if the necessary heirs would later receive equal sustenance from others; for then there is no loss (4). Furthermore, this does not apply to brothers and sisters, to whom the deceased would have provided sustenance if he had lived, even if the murderer had already foreseen this loss of theirs; as Lessius, Concilium, Soto, Lugo, Bonacina, Salm, etc., say against Sanchez, Azor, etc. It does not invalidate this to say that he who prevents someone by force from acquiring a just good, sins against justice, and is therefore bound to restitution, as was said in n. 61. Because this applies when the damage to the neighbor is directly intended, and not when the damage happens to him by accident. Therefore, contrary to this, we say, with Tamburini, Concilium, Lessius, Viva, La Croix, Elbel (against Soto, Bonacina, etc.), that if the murderer directly intends to harm these relatives (or anyone else), then he is bound to compensate for the damages; because everyone has the right not to be directly prevented by force from acquiring a just good (5). And the same should be said with Lessius, Becanus, Salm, Concilium, Viva, Tamburini, etc., against others, with respect to the creditors of the deceased, namely, that the killer must only compensate for the damages that occurred to them, if these were directly caused by him (6). 88. — It is asked (6) whether the murderer is bound to restore the damage that results, to whom the homicide is imputed? We say that he is not bound, even if the murderer is aware of the aforementioned damage, and even if he intends it; (1) Book 3, n. 6. S. Quæst. 7. — (2) Ibid. — (3) N. 630. — (4) V. 631. v. Quær. I. — (5) N. 632 and 633. — (6) N. 634.

[*Latin ed. p. 241*]

WHAT MUST BE RESTITUTED AFTER RAPE. 229 Because a wicked intention, as stated in number 63, without external action, is gravely unjust to the victim and does not obligate one to restitution; thus, Sotus, Lessius, Sanchez, Tamburini, and Croix, against a few. However, this is understood only if the homicide is not committed under such circumstances as would morally impute the aforementioned blame, as if one committed the homicide while wearing the clothes of a third person, or on his land, etc., because then there is already an external and unjust action (1). 89. It is questioned 7. Whether one is obligated to restitution who, having been attacked by an enemy, kills him, but exceeding just defense? Some excuse this, saying that the enemy then yields his right; but we do not excuse, with Lugo, Sanchez,

Navarre, Croix, and others commonly, because by exceeding, he inflicts a grave injury to his enemy, who does not lose the right he has to his life because of his own unjust aggression. However, Lugo, with Vasquez and others (against Suarez), probably excuses from restitution one who provokes an enemy to a fight and kills him; for then he does not fight against justice, since the enemy has already yielded his right by accepting the fight (2). 90. It is questioned 8. Whether the heirs of the killer are obligated to make restitution for damages if he himself has already been subjected to punishment? Sotus, etc., deny this; but it is to be affirmed with Spotorius, Croix, and others commonly. However, Sotus, Lessius, Filatius, Busembach, and Croix probably except if the heirs of the deceased do not demand this restitution, because then they are presumed to have waived it; provided (it is understood) that the thing does not exist, or that it is not of great value (3). POINT VI. WHAT MUST BE RESTITUTED AFTER RAPE. 91. To what is the corrupter obligated if the woman consents? — 92. To what if he defiled her by force or threats? — 93. If there is a true or false promise, he is obligated to marriage. — 94. Limitations. I. If the woman could have detected the falsehood. — II. If a bad outcome is feared. — III. If the woman remits. — IV. If there is a disgrace to the family. — V. If the man uses only touch. — 96. VI. If he finds a girl corrupted. — VII. If the woman refuses marriage. — 97. If the corrupter is bound by a vow of chastity, etc. — 98. If he is a blood relative, etc. 91. In this, it is necessary to distinguish to what the defiler is obligated when a promise of marriage does not intervene, and to what he is obligated when such a promise does intervene. When he does not promise marriage, and the girl voluntarily consents to her violation, he is obligated to nothing with respect to her. And Lugo, Sanchez, Suarez, and Lessius say the same with respect to the parents, since she is the mistress of her own body; but St. Antoninus, Navarre, Salm, etc., obligate him to repair her reputation with some sign of honor, or by an expression of apology, provided that they do not refuse this (4). Otherwise, commonly, Sotus, Suarez, Sanchez, Vasquez, Molina, Roncalli, Layman, Lessius, Lugo, Salamanca, etc., say that a man is not obligated to repair to the father the damage to his property because of a larger dowry that he needs for his daughter; except 1. if he manifested the crime; 2. if the girl was poor, and the man very wealthy, as Salm, Bannier, Tapia, etc., say (against Dicast and Rebellio); for then it is presumed that she consented under such a condition; 3. if the judge imposed a penalty on the man as punishment for his crime, to give her a certain sum; otherwise, the laws (cap. 1 and 2 on Adultery and leg. un. ff. on abduction) condemn the defiler either to taking her, or to providing her with a dowry, because the laws presume deception or force, whenever the opposite is not proven. But in conscience, Salm (1) correctly says. — (2) Numbers 637 and 639. —

(3) Number 705. — (4) Number 641. 2 I.

[*Latin ed. p. 242*]

230. TRACTATE X, ON THE SEVENTH COMMANDMENT. A man is not held liable if the woman genuinely consented of her own free will (1), as stated in Tractate 3, number 26, paragraph 92. However, if a man deflowers a virgin by force, deceit, or threats, he is obligated to make amends to her and to her father for the damages he has caused to their honor and property, by providing a dowry or increasing the existing dowry. Although he is not obligated to marry her, as commonly stated by Lugo, Lessius, Salmeron, etc., the judge may nevertheless justly compel him to do so as punishment for his crime, according to the text in Leviticus 19:20 and Exodus 22:15 (2). Indeed, if the deflowerer cannot restore the damage in any other way, he is obligated to marry her, as commonly stated by Lessius, Lugo, Salamanca, Bannier, and the Dicastery (3). Conversely, he is not obligated to do anything if: 1. the woman was already corrupted beforehand, so that the injury does not leave a lasting stain on her reputation. 2. If she would be equally able to marry whether she were a virgin or not, because in that case, there is effectively no damage. However, it should be noted that if the woman is treated badly by the man due to a known defect, the deflowerer must in some way make amends for the harm she suffers (4). But what if he induced her through prayers or gifts? It is commonly stated by Sanchez, Lessius, Lugo, Sotelo, Vasquez, Salamanca, etc., that he is not obligated to do anything, provided that there were no threats or a serious fear of damage; and in that case, they say that he is not even obligated to make amends for the entire damage (5).

93. This is because there is no promise of marriage present. But if a promise of marriage exists, the deflowerer is obligated to marry the girl, not only when the promise is true, but also when it is false, as must be held according to St. Thomas (6), whom are commonly followed by St. Antoninus, Sanchez, Lugo, Lessius, Tamburrini, Salamanca, Croix, Viva, etc. (contrary to a few who hold that only the damage should be repaired). The reason is: 1. that such damage cannot be adequately repaired in any other way than by marriage. 2. (and this is the stronger reason, and will be valid in the future for resolving many cases) because in contracts that are not specifically named, such as a gift, or the like, when one party performs their part, the other party is obligated to perform their part as well, even if the first party has falsely promised, just as if they had truly promised in good faith, because this is necessary to remove fraud from contracts, which would otherwise impede human commerce and cause common harm (7). The same should be said by Lugo and Salamanca, contrary to Sanchez, if someone were to recognize a widow of good reputation through a false promise of marriage (8). This applies to conscience; but with regard to external law, we note in passing that the continuator Tournely (9) points out

that it would be very useful in preventing these frequent crimes if bishops and magistrates were to declare all such promises of marriage, even those confirmed by oath, to be null and void, unless they were supported by clear and valid evidence.

94. However, the aforementioned statement regarding the obligation of the deflowerer with a false promise is limited if: 1. the woman could easily have perceived the deception from the words or other circumstances, as commonly stated by Lugo, St. Antoninus, Navarrus, Sylvester, Salmeron, Busembach, and St. Thomas (10), if the man were much more noble or wealthy, because (as the Angelic Doctor says) it can reasonably be presumed that the woman either pretended or wanted to be deceived, but was not actually deceived. How great must this disparity be? (1) Book 3, number 641. 2 Ibid., see (a). — (b) Ibid., see. This concerns the man. — (3) Number 649, at the end, see "to those." — (4) Number 642, doubtful. — (5) Ibid., doubtful. — (6) Supplement, question 46, second part, answer 4. — (7) Number 642, second part. — (8) Number 646, at the end. — (9) Treatise on Decisions, book 3, chapter 6, paragraph 1, conclusion, see "queries ad." — (10) Supplement, question 46, second part, answer 4.

[*Latin ed. p. 243*]

WHAT MUST BE RESTITUTED AFTER A VIOLATION. 231 Lessius illustrates this in the following manner: If a man were the son of a nobleman, and a woman the daughter of a craftsman; but Sanch. Navarr. and St. Anton. say that a lesser inequality suffices: (Greek verb, "if noble but not of the great") he would take the daughter of a farmer or artisan. And the aforementioned authors say the same with others, and with the same Lessius, if the man were notably wealthier (1). Also, Sanch. Lugo, Lessius, Salm., Viv., and others probably say that this applies even if the girl is unaware of the disparity; because if there were a precise obligation of marriage, then the man would be obligated to make restitution for the injury caused, exceeding the amount due according to the equality; therefore, it would suffice to provide for her by giving her a dowry (2). On the contrary, if the woman was able to perceive the disparity, as mentioned above, it is more probable, according to Lessius, St. Anton., Lugo, Sanch. Sylv., etc. (against others), that he would not be obligated to repair any damage, as St. Thomas also expressly teaches in the cited passage, saying: "And" even with regard to (namely, the repair of damage), he is not obligated, "because it can probably be assumed that the bride was not deceived, but pretended to be deceived" (3). 95. — It is limited II. if the worst outcome from the marriage was feared, as Lugo, Sanch. Busemb., Henriq., etc. say (4). It is limited III. if the woman waived the obligation of the deflowerer to marry her: since such a waiver is valid, even if the families disagree, as Lugo, Lessius, Ronc., and Laym. probably say, because the right to marry belongs primarily to her, and therefore she is free to waive it (5). It is limited IV. if the marriage

could not be consummated by the man without bringing dishonor to the family; for then he is not obligated to marry, even if the promise was true, because in that case, like a prohibited thing, it is invalid, as Laym., Navarr., Sanch. Ronc., Sporer, etc. commonly say (6). But he would certainly be obligated if the promise was true and the disparity was only in wealth, as will be said in volume 2, treatise 18, number 16, speaking of betrothals. It is limited V. if the man only touched the virgin, as Sanch. Navar., Lugo, and Croix say, because mere touches are not such an injury as to obligate one to enter into a marriage falsely promised, nor are they of such weight as not to give the woman reason to suspect a falsehood; unless (it is excepted) the woman was noble or of good reputation; or unless the man had only touched her, with a promise of marriage, and because of those touches (already revealed, or at least made known to the family), the girl remained marked with infamy (7). 96. — It is limited VI. if the man believed the girl to be a virgin, but found her to be corrupted; so it is commonly said by Laym., Sanch., Salm., Ronc., Holzman, Sporer, etc. And in that case, according to the more probable opinion of Lessius, Coninch., and Roncagl., it is said that the man is not obligated to give anything for the intercourse, unless there was an express agreement, or unless the woman remained marked with infamy because of that act; but Elbel probably says that if she herself revealed her shame, the man would be obligated to give nothing at all (8). It is limited VII. if the girl, exhibiting her consent to her violation, opposed entering into marriage because of the false promise of marriage, because the man is not then obligated to do anything; unless, as is correctly pointed out by Lugo, he had pretended to be of a better condition, or of equal condition, and was of a condition that required a greater dowry; because then, even if the woman refused to marry, he would still be obligated to compensate for the greater dowry that she would need in order to marry.

(1) Lib. 5. n. 643. v. but lib. Dubit. 1.

(2) Ibid. Dubit. 2.

(3) N. 645. Dub. 3.

(4) N. 644.

(5) Ibid.

(6) Ibid. et lib. 6. n. 851.

(7) L. 3. n. 645.

(8) N. 646.

[*Latin ed. p. 244*]

232 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. We say, in accordance with Navarre, Vasquez, Sylv., and Henry (against Sanchez and Lugo), that a man is bound to marry a woman if the woman would not refuse the marriage, but her parents do: for a promise, especially, is understood to be made in order to compensate for a loss. We

say the same with Lessius, Azorín, Bonaventure, Lugo, and Croix (against Molinos, etc.), if a woman had suffered a violation against her will, and afterwards refused to marry the one who had committed the injury. On the contrary, as Lugo, Lessius, and others rightly say, the one who commits the violation is not bound to marry her if there was no promise made, neither a true one nor a fictitious one, provided that some other means existed by which the damage could be repaired, and the inequality was not excessive (1). 97. — It is doubted whether one who has taken a vow of chastity is bound to marry a woman if he deflores her. Laym and Salamanca deny this, but Lugo, Sanchez, Vasquez, Tamburrini, and Croix rightly affirm it. I do not see that the opposing opinion can be considered probable, because (as stated in number 93), in order to maintain good faith in contracts, one who makes a fictitious promise is bound to fulfill his part, as if he had made a true promise, provided that the other party fulfills their part. It is objected that the promise is invalid because of the prior vow. But it is answered that debts are always to be preferred to gratuitous obligations, such as vows. Secondly, if the violator could not promise marriage, he could at least promise to obtain an absolution from the vow, and he has already obligated himself to do this by promising marriage, since he who is bound to an end is also bound to provide the means, namely, to obtain a dispensation. And in the case where he cannot obtain it, he is bound at least to compensate for the damage, as Lugo and Sporer rightly say (2). 98. — It is doubted to what extent one who violates a virgin who is betrothed to him under a promise of marriage is bound. If the promise was true, and there was an agreement to obtain a dispensation, the common opinion is with Lugo, Laym, Sanchez, Salamanca, etc., that the promise is valid, and obligates him first to seek a dispensation, and then to marry, whenever such dispensations are granted. Therefore, we say the same with Lugo and Tamburrini, if the promise was fictitious, and the woman could not have perceived the fiction; for the one who makes a promise is bound to effect everything that he would have done if the promise had been true. However, if he was unaware of an impediment to the marriage, and obtaining a dispensation would require great inconvenience or expense, he is not bound to do so; he is only bound to compensate for the damage, as any other unjust violator would be (3). POINT VII. WHAT MUST BE RESTITUTED FOR ADULTERY. 99. To what is the adulteress bound? And is she bound to reveal the illegitimate child to the father? — 100. Is the son bound to believe her? — 101. To what is the adulterer bound? And is it permissible for him not to acknowledge the child conceived? — 102. In case of doubt, whether the child is the son of the husband or of another adulterer — 103. If the child is sent to hospitals, etc. 99. — The obligation of the adulteress must be distinguished from that of the adulterer. The adulteress, since she cannot repair the damage to the husband and legitimate children caused by the illegitimate child that was born, is bound at least to compensate

for it with her own goods, or by depriving herself of those things which she could obtain through her industry, or by encouraging the son to enter religion, if he is suitable for it (4). (1) Book 3, number 648. — (2) Number 649. — (3) Number 650. — (4) Number 65a.

[*Latin ed. p. 245*]

WHAT MUST BE RESTITUTED ON ACCOUNT OF ADULTERY. 233. A doubt remains as to whether she is obliged to reveal her fault? We answer that she is not obliged to do so, if she prudently fears death, or infamy, and if this damage to herself greatly outweighs the damage to the husband and legitimate children; but if the damage is equal, or only slightly greater, she cannot conceal her crime; so say Lugo, Sotelo, Lessius, Tollet, Croix, Roncaglia, Diana, Tamburini, and Sporer (against some). Therefore, an adulteress must reveal her crime, 1. if she is already of bad repute among the common people; or, as Lessius and Lugo say, if the woman is of such low condition that her reputation is not worth as much as the damage to another. 2. If, on the contrary, a common damage is feared, e.g., if the husband is of depraved morals, and must succeed to a principality. 3. If she could reveal herself to her fucking husband without much damage; but Lugo and Sporer rightly say that it is difficult to oblige an adulteress to do this, because it is difficult for her to avoid great vexation, as is inferred from chapter 9 on Penance, where it is said: "To a woman who conceives a child through adultery, even if she fears to confess this to her husband, penance must not be denied." But, on the contrary, Lugo, Lessius, Roncaglia, Sporer, Croix, and Tamburini, etc., commonly say that the mother is obliged to reveal herself to the illegitimate son, since she could reasonably hope that he would believe her and relinquish his rights. It does not object to say that the loss of reputation outweighs the loss of property; because, on the one hand, it is not certain that the publication of the crime among one or the other party will be a great disgrace; indeed, it does not seem improbable that the opposite is true, as will be said in treatise 11, number 11. On the other hand, the mother is certainly obliged to make amends for the damage; therefore, whenever she is not certain that her own damage is much greater than the damage to the other children, she is obliged to make amends for it (1). 100. — But the point is that the son is not obliged to trust his mother in this matter, as is commonly taught by Azorín, Filluic, Lugo, Lessius, Laym, Roncaglia, Salm, Holzmüller, etc. For no one is obliged to believe the testimony of one person, even the most trustworthy, as is stated in chapter Relatum, on testimony, and in chapter Licet, on testimony, where it is said: "There is no cause that can be concluded solely on the testimony of one person, even if it is legitimate;" unless it is in the common good, to avoid frauds that could easily be committed otherwise. Therefore, Ethel and others say that it rarely happens that a mother is obliged to reveal herself to her son, because it rarely happens that a son is obliged to believe

his mother. But if there were ever judgments of the illegitimacy of the son, so that they were known, the son would be legally harmed in the external forum, e.g., if the mother clearly demonstrated the absence or impotence of the husband at the time of conception, then the son would be obliged to believe his mother, and the mother would be obliged to reveal herself to her son (2). 101. — Thus far concerning the adulteress. As for the adulterer, he is obliged to restore to his legitimate children both the inheritance left to his offspring, and the maintenance provided to them by a third party from the third year of age, because until the third year, the mother is obliged to nurse the child, if she can; but if she cannot, the adulterer is also obliged to do so (3). Some authors say that if the adulterer had not induced the mother to bear a child among the legitimate ones, but had, on the contrary, acted negatively, then he is not obliged to provide maintenance, or at least not to provide for the inheritance. But we say, along with Lessius, Molinæ, Cajetan, Concinius, Salm, Croix, etc., that he is commonly obliged to do both; because he is always the proximate moral cause (1) Book 3, number 653. — (2) Ibid. in fine, and 654. — (3) Number 655.

[*Latin ed. p. 246*]

234 TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE, concerning the restitution of damages, by imposing an adulterine obligation to provide for the illegitimate offspring (1). 102. — It is questioned: 1. To what extent is an adulterer bound in doubt as to whether the offspring is his, or the husband's? Laym holds that the adulterer is bound to the extent of the doubt. But commonly, Soto, Navarrus, Lugo, Lessius, Sanchez, Castrop, Tournhem, and the Council teach that he is bound to nothing whenever he is not certain that the offspring is his; otherwise, he would possess the marriage, and he would also possess the adulterine exemption from satisfying the damage (2). And the same applies (as Soto, Sanchez, Salmanticensis, Trullius, etc., rightly say) if there is doubt between two adulterers as to whose offspring it is; for the same reason, because a certain obligation cannot be imposed for a doubtful one. He is only excused, as Elbel and others hold, in the case where the second adulterer has been made aware that his own sin is the cause of the uncertainty as to whose offspring it is; in this situation, the first adulterer cannot subsequently be required to pay the damage; therefore, in this case, the second adulterer remains obligated for the entire damage, as stated in number 50 (3). 103. — It is questioned: 2. If the adulterers were wealthy, and sent the offspring to a hospital, are they bound to cover the expenses? Sporer, Elbel, Salmanticensis, etc., affirm this; because (as they say) such institutions are established only for the poor. But it is probable that Henricus, Dicasterius, Rodriqeus, and Renzi deny this, and the authors of the first opinion also consider it probable, because hospitals are not erected solely for the relief of the poor parents,

but also, and perhaps even more so, for the protection of children born of illegitimate unions, due to the danger of temporal and eternal death that they face if the parents were to provide for them at their own expense (4). PARAGRAPH VIII. ON THE TIME AND MANNER OF RESTITUTION. 104. The obligation to restore immediately, and to repair the damage. — 105. He should not be absolved before he has restored. — 106. It can be restored by another; but what if that person does not restore it, etc. And if the confessor orders Masses to be celebrated, when the owner is certain, etc. 104. — REGARDING the time, the thief (when he is able) is bound to restore as soon as possible, otherwise he sins gravely, and repeatedly (according to the opinion of Bonacini and others), as often as opportunities to restore are offered to him, but according to what Lugo, Navarrus, Salmanticensis, etc., say, he probably commits one continuous sin: note what was said in treatise 3, number 47. However, he is not capable of absolution if he wishes to restore in death, when he could do so in life, or if he wishes to restore part, when he could restore the whole. Furthermore, the debtor may sometimes postpone the restoration if there is a just cause, such as to avoid scandal, or his own infamy, or for other reasons, which will be examined in the following paragraph. But it should be noted, with the more common opinion of Lugonis, Lessius, Molinus, Tamburinus, etc. (whatever others may say), that when the debt arises from a crime, even if there is a just cause for postponing the restoration, the thief is always bound to fully compensate the creditor for the damage suffered; because such damage is always the result of the theft committed beforehand (5); otherwise, if the debt arises from a contract (6). 105. — Furthermore, the restoration may be postponed if the delay is slight (1) Lib. 3. n. 65g. — (2) N. 657. — (3) N. 658. — (4) N. 656. — (5) N. 679 ad 685. — (6) N. 678.

[*Latin ed. p. 247*]

OF THE TIME AND MANNER OF RESTITUTION. 235 (namely, 20 days, as Castrop. believes), and the creditor suffers no loss: furthermore, since the penitent can restore immediately, speaking regularly, we say with the Council that the confessor cannot absolve the debtor unless he first restores, as we shall also say in the last point, speaking of those who are in the immediate vicinity. The reason is that since restitution is a very difficult thing to accomplish, if the penitent were absolved before making restitution, by common experience, he would remain in the same danger of not restoring. Therefore, St. Thomas of Villanova rightly says: "First restore, and then return to the confessor to be absolved." It is said regularly, because (as P. Concina says), if restitution cannot be made so quickly, and the penitent is truly judged to be prepared to make restitution, he can be absolved the first time; and probably (as Lugo and Salm. say), even the second and third times, if the circumstances are such that the confessor should grant him a delay (1). However, if the warning

of restitution would not be useful, see what is said in volume 2, treatise 16, number 115, speaking of the sacrament of penance. 106.—As for the manner of restitution, he who could not restore without his own shame must at least restore secretly through the confessor, or through another faithful person. But here there is a doubt: if it happened that the confessor retained the money entrusted to him to be restored, is the penitent still obligated to pay it? Sotos, Castrop, etc., deny this, saying that since the debtor is not obligated to restore publicly, he is obligated to be content that the creditor has received restitution from another. But we absolutely affirm, with Lugo (who calls the contrary opinion probable), Less., Nav., Sylv., Spor., Salm., Croix, etc., 1. because although a thief is not obligated to manifest his crime, he is nevertheless always obligated to make the owner whole; 2. because the thief is obligated for all the damages that occur to the owner as a result of the theft; and it is never presumed that the owner is content, unless he recovers what has been taken from him (2). However, if the owner were certain, and the confessor had imprudently celebrated Mass, Tambur. says that if the opinion opposed above, which is held by Sotos, etc., is probable in the first case, it is also probable in this case that the debtor is obligated to do nothing. But I cannot agree with this either, because the creditor always seeks his own, and he wants to dispose of it at his own discretion, not at the discretion of others (3). It has already been said in number 65 that the thief is obligated to ensure that the thing reaches the creditor's hands at his own expense. Note, however, that a bailee, if he sends the bailed thing to the owner through a person who is generally considered faithful, and the thing is lost, even due to the fault of the messenger, he is obligated to do nothing, as stated by L. Argentum 20 ff. de Commodat, point IX. ON THE ORDER OF PERSONS TO WHOM RESTITUTION MUST FIRST BE MADE. 107. If the thing exists, it must be delivered to the owner. But if it has been sold, etc. — 108. Creditors with a claim should be preferred. — 109. If all are creditors with a claim. — 110. Whether the debt arose from a crime or from a contract, etc. — 111. Whether certain debts should be preferred over uncertain debts. — 112. Whether hypothecated debts are preferred over personal debts, and whether prior personal debts are preferred. — 113. Whether the debtor can prefer whomever he wishes. — 114. What if the creditor demands, etc. — 115. If a servant receives wages from the lord with money that is subject to a claim. 107.—WHEN the debtor can satisfy all, no order needs to be observed. But when he cannot satisfy all, the following rules must be observed: (1) Book 3, numbers 679 and 682. — (2) Number 704, see Question IV. — (3) Ibid., see "What if."

[*Latin ed. p. 248*]

236 TRACTATE X. ON THE SEVENTH COMMANDMENT. 1. If something exists, it must certainly be restored to its owner, or, if the owner is

deceased, to the poor, as Busemb says. The same applies to the restitution of an item purchased when the price has not been paid, because in that case, ownership remains with the seller, as stated in § "Venditae" of the Institutes of Divine Law. However, if the seller has accepted a pledge or guarantee for the price, then ownership has already passed to the buyer, and the seller is secure for his price. We say the same regarding Lugo, Molin, Laym, Castrop, Azor, etc. (contrary to Bonac. and Salmant.), if he has received payment in good faith, because even then, ownership of the item belongs to the buyer, as in the following chapter on Contracts, number 167. Therefore, the seller is entitled only to a personal claim against the buyer (1). However, if stolen money has been mixed with the seller's own funds, Castr., Ronc., and Croix correctly state that it must be restored to its owner, since in such a case, the entire sum remains obligated to the owner (2). 108.—2. Debts that bear interest must be paid before those that do not, because the promise to pay interest always includes the tacit condition that the debt be paid with the creditor's money (satisfying the debts), as commonly stated by Lugo, Syle, Molin, Navarr., Less., etc., from the law "Inter," § 15, ff. concerning adjudged matters (3). 109.—3. If all debts are burdensome, then: 1. Debts secured by a mortgage on the debtor's property must be paid first. 2. Debts with a tacit mortgage, and these take precedence over the dowries of wives. 3. Deposits in the debtor's possession that have been lost. 4. Debts of privileged creditors, namely orphans, pious institutions, etc. 5. Other personal debts. But to all these creditors, even if they have an express mortgage, precedence must always be given to the one who provided money to purchase the property, or to repair the house, or to cultivate and maintain the land, or to harvest crops, as expressed in the law "Qui potiores," etc. (4). 110.—It is debated: 1. Which debts should be paid first, those arising from a crime (delictum), or those arising from a contract? There are three opinions: the first opinion holds that debts arising from a crime should take precedence; so say Medin and Rebell, etc., along with St. Thomas (5), because retaining stolen goods is a greater injury than failing to pay for a debt promised under a contract. The second opinion holds that debts arising from a contract should take precedence, not gratuitous debts, but burdensome ones; so say Cajet and Navarr., etc., because, they say, otherwise restitution would be made for theft based on what pertains to others. But Lugo does not consider this reason to be sound. The third opinion, which is more common among Lugo, Less., Castrop, Bonac., Laym., etc., and which I find more probable, states that these debts should be paid pro rata, unless there is a specific item belonging to the owner, or unless one of the creditors has a mortgage. Otherwise, there is no legal basis for giving precedence to creditors arising from a crime or from a contract (6). 111.—It is debated: 2. Should certain debts (namely, those with known owners) take precedence over uncertain debts? Less., Bonac., Busemb., Salmant., etc., probably affirm this, because certain debts

are owed to creditors by natural law, while uncertain debts are owed only by positive law to the poor. Nevertheless, the opinion of Molin, Bann., Tap., Rebell., etc., which Lugo calls the most probable, is that restitution should be made pro rata; while it is very probable, as others say (Cajet, Covarr., Arag., etc.), that restitution is owed to the poor even by natural law, because such a presumption (1) Lib. 3, nos. 684 and 685. — (2) No. 686. — (3) No. 649, Second part, and no. 689. — (4) Nos. 689 and 690. — (5) Opusc. 75, chap. 18. — (6) L. 3, no. 689.

[*Latin ed. p. 249*]

ON THE ORDER OF PERSONS, etc. 237. It is the will of creditors who are unknown that restitution be made, because, since it cannot reach those to whom it is due, at least let it benefit the poor for the sake of their souls (1). 112. — It is doubted 3. whether prior creditors should always be preferred. Speaking of hypothecary creditors with an express hypothec, it is certain that the prior ones should always be preferred among them. And Lugo, Vasquez, Molina, and others commonly say that the creditor with a tacit hypothec should be preferred over those who have an express one. However, among personal creditors, it is probable, according to Castropal, Lessius, Holzmeyer, and others, that these should be satisfied pro rata among the creditors, since the goods are not obligated to these, but to the person of the debtor, who is equally obligated to all. However, the opinion of Lugo, St. Antoninus, Suarrez, Navarret, Bonaventure, Concil of Trent, Tolosa, and Salmanca is more common and probable, citing St. Thomas and others, that prior personal creditors should be preferred, because the rule: "He who is first in time, is superior in right," although assigned by civil law only for hypothecary creditors, is assigned by canon law (reg. 45. jur. in 6.) for all, and this rule is founded on the law of nature, because although the personal creditor directly has the debtor's person seized, he indirectly has the debtor's goods obligated (2). 113. — It is doubted 4. whether a debtor can prefer a poorer creditor among personal creditors? Molina, Sanchez, Lessius, Layman, Medinaceli, and others, with St. Thomas (3), probably assert that this is so, because the poor suffer greater damage. But it is more probable that Lessius, Castropal, Azorín, Vasquez, and Lessius, among others, deny this, because nowhere in the laws is such a preference indicated. Lessius makes an exception if the poor were in grave necessity: but I say that this should only be understood when other creditors are particularly obligated to assist such a poor person, by a precise obligation of alms (4). 114. — It is doubted 5. whether a creditor who has collected his entire debt can retain it for himself, without distributing it to other personal creditors? Lugo says no, if he is not prior, and if he collected it extrajudicially. But the most common opinion is the opposite, according to Lessius, Navarret, Cabassol, Salmanca, and others; because the laws favor diligent collectors, and do not distinguish in judgment, whether it was done intra or extra, as

is observed in the law Pupillus, ff. Quæ in fraud. et t. If not, in 6. § 1. ff. de Bon. auct. jud. etc. Therefore, Busembach says with Navarret, Sanchez, and Bonaventure, that when one of the equal personal creditors collects his credit, the debtor is obligated to satisfy him (5). If no creditor collects, the debtor (who is unable to satisfy all his creditors) cannot arbitrarily satisfy one completely. And in this case, we say with Castropal, Tournon, Concil of Salmanca, Bonaventure, and others (against Lessius and others), that the creditor cannot retain the complete payment made to him. It is objected that the aforementioned law Pupillus does not revoke what has been paid; because the laws only intend to reward the creditor's diligence, but not to give anyone the right to retain what the debtor has unjustly paid; nor can it help to have received in good faith (6). 115. — It is doubted 6. whether a slave who is not precisely necessary can receive a salary from his lord with funds obtained through unjust means? It is answered that he can retain it, if he received it in good faith. But if he later realizes that his lord will be unable to satisfy other creditors by making such a payment (without necessity), we say with Navarret, Angulo, and others, that he is obligated to withdraw from it, and cannot proceed to demand (4) Book 3, n. 687 — (a) N. 690. — (5) Opusc. 73, c. 18. — (4) L. 3, n. 691. — (5) N. 692. — (6) N. 693.

[*Latin ed. p. 250*]

238 TRACTATE X. ON THE SEVENTH PRECEPTS OF THE DECALOGUE: For otherwise, he becomes the cause of damage to creditors, as we said in a similar case, no. 75 (1). On the contrary, wives and children lawfully receive sustenance from their father with any amount of borrowed money, as Sanch., Laym., and Croix say (provided they have no other means of support), since such a debtor is obligated by justice to support them. Indeed, with regard to the wife, Mol., Navar., Vasq., and Laym. say that, even if she had other means of support, she can still receive sustenance from a usurer who is unable to repay, because the husband is no less obligated to support the woman than he is to repay debts. Laym. adds that wages paid to workers for the debtor's necessary needs should also take precedence over hypothecary debts (2). POINT X. WHAT CAUSES EXCUSE FROM RESTITUTION. 116. Causes that excuse the creditor are: 1. if it is restored to the creditor; 2. if his consent is presumed; 3. if his abuse is foreseen. — 117. From the debtor's side, 1. if there is no fault; 2. if a settlement is reached; 3. if his own loss is much greater; 4. if there is danger to the soul; 5. or to life, or to reputation; 6. if he cedes his goods. — 118. Necessity excuses. — 119 and 120. What if the creditor is also in need? 116. — SOME causes excuse from the creditor's side, others from the debtor's side. From the creditor's side, it excuses if you have paid the creditor of your creditor, because by acquiring the cession of that credit, you can justly compensate. 2. If you can prudently presume that the

owner will consent to you taking the thing or retaining it after receiving it, as commonly admitted by Sylv., Navar., Lugo, Less., Sanchez, Sa, Sayr., Holzm., Croix, etc. (3); and St. Anton expressly teaches this (4), saying: "It is said to be without the owner's consent, because if one believes that the owner would permit it, and there is a just reason for believing (that he would restore it), he is not obligated." And this is derived from l. 46, § 7, ff. de furtis, where it is said: "It is rightly said that he who thought that he was taking the thing with the owner's consent was not a thief; for what did he do with deceit who thought that the owner had consented?" The reason is that all the malice of theft consists in taking something belonging to another against the owner's will; therefore, if the owner consents, it is no longer theft. This is confirmed by St. Thomas (5), who allows a religious to give something under the hope of the prelate's approval, namely, if he believes that he would have been granted permission if he had asked for it. 3. The debtor is not obligated to restore if the owner would have used the thing to be restored for sinning, as Less., Lugo, Sot., Mol., Navar., Croix, etc. say, and St. Thomas expressly teaches this (6), saying: "When the thing to be restored appears to be seriously harmful to the one to whom the restitution is to be made, or to another, it should not be restored to him; for restitution is ordered for the benefit of the one to whom it is restored." Indeed, if the owner would have used the thing to the detriment of a third party, you can always refuse to give it to him without causing yourself serious harm, as stated in no. 56, where it was said that it is never permissible, even to avoid one's own death, to return a sword to an enemy who intends to kill. And in that case, you would sin not only against charity, but also against justice, as Lugo, Sot., Less., Castrop., Conc., and Salm. commonly teach (7), because a neighbor has the right that no one should cooperate in his detriment. 117. — On the other hand, the debtor himself is excused from restitution, (1) Lib. 3, n. 694. — (2) N. 695. — (3) N. 700, see Query here I. — (4) 2, p. t. 1, c. 15, in princ. — (5) in 4, D. 15, q. 2, art. 5, q. 4. — (6) 2, 2, q. 62, n. 5, ad 1. — (7) Lib. 3, n. 697, see Teneria.

[*Latin ed. p. 251*]

THOSE CAUSES WHICH EXCUSE FROM RESTITUTION. 239 1. If, in causing the damage, he did not commit a mortal sin, as we said in number 39; 2. If the restitution were to be made to the poor for uncertain debts, and the debtor had obtained a composition from the Pope, as stated in number 68, or if he himself were poor, and had applied it to his own needs (1); 3. If he could not restore without suffering a much greater loss, and exceeding double, for then restitution can rightly be postponed, provided that the lord would not suffer equal damage from the delay, as stated in n. 65. However, in the case of the loss of profit, the debtor cannot postpone restitution, as rightly say Salm. Beya, however, makes an exception if the creditor would suffer no damage from the delay (2). 4. If the debtor could

not restore without endangering his or his family's life, e.g., if there were a danger that a woman or daughters would be prostituted, or that they would give themselves to theft, etc., as Less. Mol. Bon. Filliuc. etc. (3) state. 5. If he cannot restore without endangering his life or reputation. Provided that the loss of his reputation outweighed the damage to the creditor, as in number 99, at the end. 6. If he has surrendered his goods; for the laws allow an insolvent debtor, in order to satisfy all his creditors, to retain as much as is sufficient for his support according to his condition, by surrendering the rest of his goods to them, and thus to be released from what he cannot pay, provided he does not come to a better fortune: l. Cum, and Fil. c. Qui bon. etc., although Laym. says that even remaining in poverty, he is bound to work and acquire as much as he can, in order to satisfy. However, it should be noted that such a surrender does not apply to debts incurred through fault; although Less. Navar. and Salon. also grant that one can surrender his goods, retaining for himself as much as is sufficient for his sustenance (4). 118. — It excuses 7. poverty, if, by restoring, the debtor would not be able to lead a decent life according to his condition: Azor. Sot. S. Anton. Navar. Laym. Salm. Croix, and others commonly (5); provided (it is understood) that the debtor has justly acquired such a condition; however, if he has unjustly acquired it through theft or fraud, he is bound to restore, even if he is to lose his condition, as the doctors commonly teach. Furthermore, as they say, Castrop. Navar. Sylo. P. Laym. Croix, etc., it is understood that the debtor has not brought himself into such a need through gambling, drunkenness, etc.; but notwithstanding this, it seems to me and to others that it is harsh to obligate him to make complete restitution, even if he has justly acquired his condition from his circumstances. However, S. Ant. Sporer. Elbel, etc., rightly point out that in such a case the debtor is always bound to reduce his expenses, so that he may be able to restore at least what he can (6). 119. — But a greater doubt is whether poverty excuses from restitution, even if the lord were also poor? Here it is necessary to distinguish between extreme necessity and grave necessity: if the debtor, by restoring, would put himself or his family (namely, his children, parents, or wife) in extreme necessity, he is excused; because then he uses the goods which he is about to restore, just as if he were already in extreme necessity; and this, although the alien thing exists in its own form, and even if the owner of the thing were also in the same extreme necessity; because in such a necessity all things are common, and therefore in such a case the condition of the possessor is better; but Less. and Castrop. rightly make an exception if it happened that the lord of the thing was in extreme necessity from that particular theft; since the lord who previously possessed it is then to be preferred (7). But if the thief is bound to restore, even after the necessity has passed, see what is said in number 19. Speaking of grave necessity, if only the debtor is in grave ne- (1) Lib. 3. n. 696. — (2) N. 697. — (3) N. 698. ad 9. — (4) N. 699. — (5) N. 702. — (6) N. 698. ad 5. et 6 et

n. 702. ad Dicendum II. — (7) L. 3. n. 701.

[*Latin ed. p. 252*]

240 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. If, out of necessity, or if he must decide to restore something that he has justly acquired, he may postpone the restoration, as stated in the preceding number. However, the question remains: when both, namely the debtor and the creditor, are in the same grave necessity, should the restoration be made? The answer is that if the creditor is already in a grave necessity, the debtor must restore, even if he himself would be placed in an equal grave necessity, because in equal necessity, the creditor should be preferred; thus, generally, Azor, Molin, Lessius, Layman, Spotorius, Salmerius, Croix, etc. However, if both the debtor and the creditor are already in the same grave necessity, to the extent that what is available is not sufficient to sustain their lives according to their respective circumstances, some say that the debtor is obligated to restore. At least, if the debt arises from a fault, as Roncaglia says. But Lessius, Castropus, Sylvius, and Trullius, along with Roncaglia, rightly say that it is probable that in such a case, the restoration can be postponed; because then the debtor, by restoring, would subject himself to a much greater loss, and would have to fall from a grave necessity into a state almost of extreme poverty. However, this is always excepted if the creditor, because of that very theft, has fallen into that grave necessity. And it is also excepted if the thing in question actually exists (1). It should be noted here that he who doubts whether the damage he caused is slight or grave, is not obligated to compensate unless it is slight. But if the thing has been taken away, and he doubts whether it is of considerable value or of slight value, he is obligated to restore it as if it were of considerable value; otherwise, he will expose his lord to suffering a grave injustice (2). As for what is required of a good-faith possessor, when there is doubt that the thing is not his, see the statements in number 73 of this tract, and in tract 1, numbers 20 and 120. Finally, the question arises: can a debtor, who gives something to the creditor, forgetting his debt, be excused from restoration? Sanchinius, Layman, Bonacich, etc., deny this, because (as they say), one act cannot satisfy two obligations, one arising from the title of justice, the other from the title of a free gift. But Cardenez, Rodriguez, Mazzotta, and La Croix, along with Rebellio and others, whose opinion is sufficiently probable, always and certainly presume that if the debtor had remembered his debt, he would never have given the gift. The reason is that it is always considered that everyone, when giving something, prefers to satisfy the obligation of justice, rather than the will to give, or the obligation made by the gift; and since the gift was made through error, or through forgetfulness of the debt, which caused the gift, it remains rescindable by the same giver, who is not obligated in his conscience to fulfill it; for in every man, it is presumed that there is a tacit intention not to obligate

himself, when he is deceived (3). Nor does it matter that 1. in contracts, the interpretative or conditional will is not considered, but the actual will; because in our case, it is not understood that satisfaction has been given to the first obligation through an interpretative will, but through an actual will that the debtor had from the beginning to satisfy the debt he contracted; and this will habitually persists and is never revoked; and this will must prevail, as it is prior and more urgent; and this is proven by those who write even the opponents in similar cases (4). Nor does it matter that 2. a certain debt cannot be compensated with a probable satisfaction, because this applies when the debt is certain and the solution is only probable; but in our case, we have that the debt is certain, and the satisfaction, or the giving of the debt, is also certain; therefore, equality is already established. Therefore, since there is, on the one hand, forgetfulness of the debt, which caused the gift, and which makes it either null (1) Book 3, numbers 701 and 702. — (2) Number 706. — (3) Number 702, see Question II. — (4) Ibid.

[*Latin ed. p. 253*]

OF CONTRACTS IN GENERAL. 241 or, at the very least, one that can be rescinded by the same party who made the grant; and, on the other hand, the presumed satisfaction of the obligation of justice through the persevering will of the debtor to fulfill it; in this case, the law or obligation is considered doubtful, involving both the burden of justice and the burden of the donation; and since such a law is doubtful, it does not obligate, as stated in treatise 1, numbers 15 and 32. The same principle that is stated here regarding debt applies to vows; therefore, if someone makes a vow and subsequently fulfills the promised work without remembering the vow, they are not obligated to fulfill it again; they can always and with certainty presume that if they had remembered the vow, the work already performed would be considered as fulfillment of it. This is commonly taught by Suarez, Azor, Bonaventure, Lessius, Layman, Sanchez, etc., because, at that time, the vow is fulfilled through that first intention held at the beginning when the vow was made. The same authors also state this regarding the obligation to fulfill sacramental penance (1).

CHAPTER IV. OF CONTRACTS.

POINT I. OF CONTRACTS IN GENERAL.

121. In how many ways are contracts constituted?

122. He who contracts without the intention of contracting or obligating himself.

123. Of scandalous contracts.

124. Of contracts entered into through deceit or error.

125. Through fear.

126. Without formalities.

121. CONTRACTS are constituted in four ways: 1. solely by consent, such as a sale or lease; 2. solely by words, such as a stipulation; 3. by writing, such as a bond; 4. by tradition, such as a donation, loan, deposit, and commodatum (2).

122. Note 1: If someone enters into a contract externally, but without the intention of contracting, they are not obligated (unless it is because one of the contracting parties, having already fulfilled their part when the contract was burdensome, as stated in this treatise, number 93). And he who contracts without the intention of obligating himself is probably not even obligated (3).

123. Note 2: Scandalous contracts, such as those for prostitution or fornication, before they take effect as a crime, are entirely invalid and do not obligate; however, a more common and probable opinion, held by Soto, Cajetan, Lessius, Sanchez, Lugo, Molina, Salm, Croix, etc. (although the opposing opinion of Adrian, Comitoli, and Tournhem is also quite probable), teaches that the one who promises to pay should be held to pay, and the one who receives should not be held to return it, first, for the reason mentioned above, that when one of the contracting parties has fulfilled their part, the other is obligated to fulfill theirs; and second, because an evil act, although not worthy of being used as payment, is nevertheless estimable as useful to one and burdensome to the one who puts it forth (4). See what is said in treatise 13, number 67. If someone were to offer a gift to a woman to extort sexual intercourse, she would not be able to retain the gift if the intercourse was not given; however, if the gift was given to entice the woman to consent (5).

124. Note 3: A contract entered into through deceit or error regarding the substance is invalid, even if the error did not cause the contract, namely because (1) *Lib. 3. n. 700. See limitations.

(2) N. 708.

(3) N. 710. and lib. 6. n. 853.

(4) Lib. 3. n. 712.

(5) Ibid. quær. 2. 12. 16.

[*Latin ed. p. 254*]

242 TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. Even if one party was aware of the error, even if they had contracted based on it. Conversely, if the error concerned the quality of the thing, and the contract was entered into for a reason other than the error, then the contract is certainly valid. But if the error concerned only the quality, and the contract was entered into for a reason, some Doctors

say that it is null; but the common and highly probable opinion holds that it is valid, because such a contract cannot be said to be invalid, neither by natural law, since there is already full agreement regarding the substance; nor by positive law, as is clear from the text of Justinian, Institutes, Book 4, Title 13, on exceptions, where it is declared that such a contract is valid, although the deceived party may bring an action to have it rescinded. But notwithstanding this, when the error was invincible, and the thing is still intact, it is probable, as Lessius, Layman, Castropus, etc., state, that the deceived party is not bound by the contract in conscience, since the tacit intention of all contracting parties is that they do not wish to be bound by contracts in which they are deceived (1). 125. — Note 4. Contracts entered into under duress (provided the duress is grave and unjust) can also be rescinded not only by a judge, but also by the own authority of the party subjected to duress, and this even if the thing has passed into the hands of a third party in good faith. And if the injured party ever seeks to have the contract rescinded, and the other party refuses, then that party may then compensate for the damage it has suffered (2). Furthermore, such contracts are valid in themselves, even if they were gratuitous, according to the most common and probable opinion, which is held by Lessius, Azorín, Lugo, Salamanca, and many others (3). Nevertheless, the following are excepted: 1. marriage (and also betrothals, as will be said in Volume 2, Tractate 18, number 3); 2. religious profession; 3. vows; 4. the promise or delivery of a thing to the Church; 5. the election of a prelate; 6. the authority of a guardian obtained by duress; 7. ecclesiastical jurisdiction acquired by duress; 8. absolution from censures; 9. the renunciation of benefices. Speaking now of other contracts, it has already been said that the party subjected to duress has the right to rescind the contract: this is understood when the duress is grave, but not when it is slight, according to the more probable opinion; although this is contrary to Soti, Navarre, Lessius, Sanchez, Castropus, Salamanca, etc., we do not consider it improbable; but these Doctors always except marriage and religious profession, which cannot be annulled due to a slight imposition of fear (4). 126. — It is questioned among Doctors whether a contract, celebrated without the necessary formalities, is binding in conscience? Many affirm, as Soti, St. Antoninus, Sa, Molin, etc., say, that human law indeed removes the action in such contracts, but not the natural obligation, for which the mere consent is sufficient. Many others deny this, as Lessius, Lugo, Bonaventure, Salamanca, etc., say, and they say that human law, in order to prevent fraud, can also remove the natural obligation. But since both opinions are probable, I believe that in practice the third opinion of Sanchez, Cabass, Bann, Beja, etc. (to which Soti also adheres) should be adopted, namely that when there is such a doubt, the possessor should be preferred, until he is condemned by a judge to restore the thing. (4) Book 5, No. 714, see Contractus and 715. — (2) No. 717 and following. — (5)

No. 716. — (4) No. 716, see Excipe tamen, and following.

[*Latin ed. p. 255*]

OF PROMISE AND DONATION. 243. POINT II. OF PROMISE AND DONATION. 127. Of promise. — 128. Who cannot make a donation; and if someone receives gifts from a person burdened with debts. — 129. Of donations between spouses, and between parents and children. — 130. Of a donation not accepted; and if it was made by messenger, or in writing. — 134. If it is for a pious cause; and whether a heir can accept it. — 132. Tradition, fulfillment, prodigal donation, final cause. — 133. Causes for which donations can be revoked, especially if they are uncharitable. — 134. Of a donation made in contemplation of death. 127. — Regarding a promise, it is probable that a simple promise, unless there is an express intention to obligate oneself under a serious obligation, does not obligate except for a minor fault, since such a promise does not already obligate by justice, but by fidelity or honesty alone, as St. Thomas says (1); and this opinion is also held by Cajetan, Bann, Ledesma, Henriquez, and Salm, among others (2). However, it is certainly the case that there is no obligation when the promised thing is either too harmful, or impossible, or unlawful, or useless, or whenever such a change occurs that, if it had been foreseen, the promise would not have been made; thus, expressly, St. Thomas (3), and others commonly (4). 128. — Regarding a donation, many things must be noted. It must be noted I. that the following persons are incapable of making a donation: 1. those lacking reason; 2. the mute and deaf from birth; 3. wards and minors (unless for a pious cause); 4. those condemned to death; 5. administrators of a community; unless the donations are remuneratory and charitable (5). Furthermore, those burdened with debts cannot make a donation, and it must be noted that those who receive gifts from such a person are obligated to restore them, if the debtors are unable to pay their creditors because of these gifts, because such recipients, by receiving, are a positive cause of damage to the creditor, since the contract of donation is not perfected solely by the donor's will, but also by the recipient's, and therefore, as a positive cause of damage to the creditor, they are obligated to restore (6). 129. — It must be noted II. that donations between spouses are not valid unless they are confirmed by oath, or by the death of the donor after the gift has been delivered in life. However, they are valid if they are made in contemplation of death, and if they are remuneratory, or if made by a husband who is prodigal, or by a wife in order to obtain some dignity (7). The same applies to donations made by a father to his family. However, such a donation is valid if it is made in contemplation of marriage, or of studies (and then it is not presumed that the father intends the donated thing to be included in the legitimate portion), or if the child is only a natural child, or if the father donates the fruits of inherited property (8). 130. — It must be noted III. that a donation before acceptance does not

create any obligation (unless it was made to an infant, in which case the law accepts it for them). The reason is that no obligation can be contracted between parties without the mutual consent of both, as stated in the law. If someone argues, § If, however, c. de Donat. against L. Absenti, ff. eod. tit. (9). See also de Franc. Decr. 339. And this proceeds, even if the donation was confirmed by oath (10), since the oath follows the nature of the act, namely, the donation, which by itself is revocable, whenever it is not accepted. Therefore, if a donation was made by messenger, it can be revoked until it has been accepted in the presence of the messenger, and if it was made in writing, until the response of acceptance has not been received (1). s. s. q. 89. a. 3. ad 1. — (2) Lib. 3. n. 720. v. In hæc. — (3) s. s. q. 110. a. 3. ad 8. et lib. 3. n. 720. v. Notandum. — (4) Ibid. — (5) N. 728. — (6) N. 728. — (7) N. 725. — (8) N. 724. — (9) N. 725. — (10) N. 727.

[*Latin ed. p. 256*]

244 TRACTATE X. CONCERNING THE SEVENTH COMMANDMENT. It pertains to the giver (1). Therefore, according to the more probable opinion of Lopez, Tiraquel, Decii, and others, the donee cannot accept such a donation if it becomes certain after the donor's death, because then the consent of the donor cannot be joined with that of the donee, so that a valid contract is formed. And according to this opinion, if the messenger failed to deliver the donated item to the donee due to his own fault, or if he did not carry out the donation entrusted to him, he will be obligated after the donor's death not only to return the item to the heirs, but also to compensate the donee for the damage caused. However, despite this, I do not consider it improbable that the contrary is true, which is held by Les. Lugo., Sanch., Salm., and Viva, who say that the donee can accept the donation even after the donor's death, because the donor's will, whether in writing or in a message sent, or in a mandate given for this purpose, virtually persists. And assuming that both opinions are probable, I say that if the donee has accepted the donation in good faith, and has already received the donated item, he may lawfully retain it. And all the more so if, at the time the donation is accepted, neither the messenger nor the donee are aware of the donor's death, because in that case the acceptance is certainly valid, as Sanch., Lugo., and Salmant. say from L. Inter causas, ff. Mandati, etc. On the contrary, the donee is obligated to return the item if he received it with bad or doubtful faith, since, according to what was said in number 8 of this tractate, and in the work (2), even with a positive doubt, or with a probable opinion, legitimate possession cannot be acquired (3). 131. — What was said above, namely that a donation does not obligate before acceptance, applies even if it is made for pious causes (it should be noted, however, that pious donations can be accepted by anyone), as Sanch., Castrop., Covar., Rebel., Salm., etc., more probably teach. But this is excepted if the donation is directly made to God, because then it is a vow,

and in such a case it is presumed to be a vow in which it is probable that the bishop can grant a dispensation, even if the donation has been accepted for the sake of pious causes (4). But if the donee (speaking generally of every donation) dies before acceptance, it is asked whether the heir can accept it, as Molin., Suarez, Sanch., etc., affirm. But it is more probable that this is denied by Less., Castrop., Salmant., and Rebell., because the heir succeeds to all the rights of the deceased, but not to personal rights, as this is (5). 132. — Note that IV. ownership of the donated item is not acquired until after tradition; V. if a donation is primarily made to obligate the donee to do something, it will be invalid if the end is not fulfilled by the donee, unless it was made to encourage him to perform something (6); VI. a prodigal donation is not valid (7); VII. a donation made for a present or past cause is not valid if the primary cause is lacking; unless the secondary cause is lacking (8). 133. — Note that VIII. a donation between living persons can be revoked for many reasons: 1. due to the donee's enormous ingratitude (9); 2. if offspring are born to the donor, of whom he was previously lacking, it is understood that the donation was for a large part of his property, and that it is made to outsiders; because if it had been made for the benefit of an ancestor, or for pious causes, then it can only be revoked to the extent that it is necessary for his children to have their legitimate inheritance (10). However, can the father revoke the donation because other children are born? (1) Lib. 3. N. 728. — (2) N. 729 et 750. — (3) Ibid. et 761. v. Quær. II. — (4) N. 726. — (5) N. 751. — (6) N. 754 et 756. — (7) N. 755, and more fully in lib. 6. n. 85 r. v. Cum autem. — (8) N. 757. — (9) N. 738. — (10) N. 759.

[*Latin ed. p. 257*]

OF LOANS, GRATUITOUS GIFTS, AND DEPOSITS. 245. Regarding a father's power to revoke a gift made to his children, while some deny it, it is probable that he can do so, even if others disagree. However, if the father does not revoke the gift, it cannot be revoked by the children (1). 3. If the gift is disadvantageous, that is, if it harms the children in their legitimate inheritance, and if it was made by the father to outsiders with a malicious intent, then it is revoked in its entirety; but if it was made without such intent, or if it was made to other children, it is revoked only in part. Nevertheless, the recipient of the gift is not obligated to return anything before a judicial sentence. Whether the legitimate inheritance of the children can be impaired by applying assets to pious works is permitted by Navar, Carden, Rodriq, Lop, Veg, etc., provided that the children are left with sufficient means of sustenance. However, Sanch, Less, Salmant, Concin, etc., deny this, and this opinion seems more probable, because civil laws must be observed, unless they are corrected by canon law, as we have said in section 2, numbers 14, 15, and 33 (2). 134. Finally, it should be noted that all donations made in contemplation of death are revocable until death.

And they are presumed to be made in contemplation of death whenever they are made by the donor either for a time after his death, or in consideration of his death. However, if there is doubt, they are understood to be made between living persons, and are therefore irrevocable (3). Donations made in contemplation of death are not valid when made in the absence of the intended recipient, unless a messenger is designated, or a letter is sent; but if there are witnesses present, they are valid as if the recipient were present (4).

POINT III. OF LOANS, GRATUITOUS GIFTS, AND DEPOSITS. 135. Loans and gratuitous gifts. 136. Regarding deposits. 137. Whether the thing must be preserved for the owner. 138. In which cases the depositary is obligated to restore. 135. Here are a few things to note. A loan is when something is provided for use for a definite period. A gratuitous gift is when something is granted until the owner reclaims it, and this gratuitous gift ceases with the death of the one who receives it, unless it is reclaimed by the heirs. However, a loan cannot be reclaimed before the specified time, unless the lender would otherwise suffer damage. Ordinary expenses should be borne by the borrower in a loan, while extraordinary expenses should be borne by the lender (5). 136. A deposit, on the other hand, is when something is given to be kept, so the depositary cannot use it, unless at least the owner has presumed consent; otherwise, he is obligated to restore the value of the use, if the thing is not consumed by use (6). 137. It should be noted here: first, in the case of fire, shipwreck, etc., the depositary is not obligated to prefer the preservation of the deposit to his own goods, unless the thing is much more valuable than his own; because in that case, he must prefer the deposit; but he can compensate himself for the value of his own property. On the contrary, the borrower is always obligated to prefer the preservation of the thing entrusted to him for use, otherwise, the owner is entitled to compensation for the loss (7). Whether the borrower or the depositary is obligated to restore, if the thing perishes through their fault, it is probable that they are not obligated to restore, not in a theological sense, but only in a legal sense, as Lugo, Cabass, Roncaq, and Salm say (8): see the statements here, number 41. 138. It should be noted that the depositary is not obligated to restore the deposit if he certainly knows that the thing is stolen, or if he himself had a certain reason to believe that he would not be compensated, or if he reasonably feared that the owner would abuse it (1).

(1) Lib. 3. p. 940 ad 6. in fine.

(2) N. 740.

(3). N. 744.

(4) N. 742.

(5) N. 744 et 745.

(6) N. 746 et 748.

(7) N. 782.

(8) N. 749.

[*Latin ed. p. 258*]

246 TRACTATE X. ON THE SEVENTH PRECEPTS OF THE DECALOGUE. It would be contrary to justice (as a sword used to kill an enemy), or even to charity, as Lessius says with St. Thomas (1), against Sanchius and Bonacius (2).

POINT IV. ON MUTUAL LOANS AND USURY.

139. Concerning mutual loans, and when they must be repaid.

140. Concerning loans given to minors.

141. Concerning loans given to family members.

142. Concerning usury.

143. Concerning loans given with the expectation of profit.

144. Concerning a profit freely offered.

145. Concerning an agreement not to claim the inheritance, within a long period.

146. Concerning damages incurred.

147. Concerning lost profits.

148. Conditions: 1. That the lender be notified.

149. 2. That it not be demanded beyond what was agreed.

150. 3. That the loan be the cause of damages and lost profits.

151. Whether the damage or profit must be certain.

152. and 153. Concerning risk.

154. Concerning charitable institutions.

155. and 157. Concerning conventional penalties.

158. Whether benevolence should be demanded, etc.

159. Concerning binding agreements, etc.

160. Concerning an agreement to repay in the same amount.

161. Concerning the obligation to provide what is due by justice or charity.

162. The obligation of usurers and heirs.

163. and 164. Concerning co-obligors.

139. SPEAKING of mutual loans, a mutual loan is when a consumable thing is given with the obligation to return it at a specified time, in the same condition and quality. But if the time is not specified, it must be returned when demanded (after a reasonable interval), indeed, it must even be returned if it is not demanded, if the lender, either through forgetfulness, or oversight, or distance, does not demand it (3).

140. It should be noted here that 1. a loan given to a university, a minor, or a church, or for another pious cause, cannot be reclaimed unless it is proven that it was spent for their benefit; however, this does not apply if it was given to a church with the consent of the prelate and the principal, and the capital (4).

141. It should be noted 2 that children who do not have sufficient property or assets are not obliged to repay money borrowed. L. 1. C. de S. C. Maced. And this applies not only to external law, but also to the internal law of conscience, except if they have obligated themselves with an oath to repay (which oath can, however, be relaxed by a higher ecclesiastical authority), but in the case where they received it knowingly and without the father's objection, or if the loan was spent for the father's benefit, namely, in those things that the father owed to the son, then the father is obliged to repay (5). However, what has been said about money does not apply to a thing borrowed by a family member. Nothing else needs to be said about mutual loans.

142. SPEAKING of usury, usury is the profit derived from a loan because of the use of the thing loaned. This is unlawful by positive law, and also by natural law: for in other things, use is distinct from ownership, but in consumable things; use is not distinct from ownership, since the use of a thing implies its destruction, and therefore, when in a loan ownership is necessarily transferred to the lender, to demand something in return for the thing, which is no longer his, and from a barren thing, such as money, grain, etc., would be unjust (6).

143. No profit can be demanded based solely on the loan itself. Indeed, it is not even permissible to give a loan with the expectation of any profit, as St. Thomas (7) seems to admit, if the profit is expected or demanded not from the debt of the contract, but from benevolence; however, we say that this should be understood to mean that the lender primarily intends to elicit benevolence, and secondarily expects some profit. But the principal...

(1) N. 2. q. 6a a. 5. ad n.

(2) L. 5. n. 553.

(3) N. 554 et 555.

(4) N. 556.

(5) N. 568.

(6) N. 568 et 569.

(7) n. n. p. 78. n. n. ad 5.

[*Latin ed. p. 259*]

OF MUTUAL LOANS AND USURY. 247. It is altogether forbidden to grant a loan with the hope of profit (even if that profit is hoped for out of mere benevolence); it would be as if one would not grant a loan at all without such hope, as the Gospel says: "But love ye your enemies." Luke

6:35. This is expressed in chapter "De Usuris," where it is said that a usurer is one who grants a loan with the intention of profiting, even without a contract, and would not otherwise grant it (these are the words of the text); and there, the very words we quoted from the Gospel are also cited (1). And note proposition 42, condemned by Innocent XI, which stated: "Usury is not usury, as long as something beyond the principal is demanded as if it were owed out of benevolence." This proposition is rightly condemned, because benevolence can never obligate one to provide a profit, since the lender can be compensated in other ways (2). 144. But if a lender gives something purely gratuitously, it is permissible for the borrower to retain it. But what is to be said in the case where it is doubtful whether the lender gave it gratuitously, or as payment for the loan? It is answered that when the borrower received it in good faith, and afterwards a doubt arises, he cannot be certain; then he may lawfully retain it. Otherwise, if he received it already in doubt (whatever others may say), because with doubt, no one can lawfully begin to possess (3). Moreover, if the lender was not poor, nor uncharitable, and was not influenced by any solicitation or threat from the borrower, then it can be presumed that he gave it gratuitously; especially if he gave it after the principal of the loan had been repaid (4). 145. Many Doctors, such as Laym, Sotus, Lugo, Castrop, Salmant, and others, say that if the lender gives something beyond the principal, in order not to appear ungrateful, or so that the loan would not be denied to him in the future, the borrower may lawfully retain it, because the lender is not induced to give that gift by any external action of the borrower, but only by his own internal motives, which make that donation entirely voluntary (5). 146. Note proposition 42, condemned by Alexander VII, which stated: "It is lawful for a lender to demand something beyond the principal, if he obligates himself not to demand the principal again until a certain time." In a loan, there is an intrinsic obligation for the lender to expect the return of the principal for a certain time. But if the lender obligates himself to wait for a long and extraordinary time (e.g., for three or four years), as Sporer, Medina, Serra, Ledesma, Trull, and Henrique say, then he may lawfully demand something, because such an obligation is external to the loan, and therefore worthy of compensation; at least, as Salm says, with Prado, Bannez, Arragona, etc., because the lender, by obligating himself only to wait for a certain time, is morally impossible to avoid suffering some notable damage or inconvenience. And if one can lawfully demand something if he obligates himself to give a loan within a long time, as Molina says with the common opinion, why not if he obligates himself not to demand his own, except after an extraordinary time (6)? 147. There are four ordinary reasons for which a lender may demand something beyond the principal. One reason is the damage incurred by the lender because of the loan: then, as St. Thomas says (7), it is not that he is selling the use of money, but that he is compensating himself for the damage suffered (8). ¶

(1) Lib. 5, n. 762. — (2) N. 764. — (3) N. 761, see Quær. II. — (4) Bibl. — (5) N. 765. — (6) N. 765. — (7) s. 2, q. 78, art. 2, ad 1. — (8) L. 5, N. 768.

[*Latin ed. p. 260*]

248 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. 148.—II. The title is *lucrum cessans*, that is, the profit which does not accrue to the lender because of the loan. There are those who doubt the justice of this title, but unjustly, since it is commonly approved by the Doctors, and also by St. Thomas (1), who says that someone can be harmed in two ways: either if he is prevented from obtaining some benefit which he was about to obtain, or if he is deprived of something which he already possesses. And although the Angelic Doctor elsewhere (2) says that the lender cannot demand compensation for the expected profit, because he cannot sell what he does not yet have; nevertheless, the learned Silvius (3) wisely observes that this should be understood to mean that the lender cannot demand the entire expected profit, but only the value of the expectation. But on this title, there is no longer any doubt today, since Benedict XIV in the bull *Vix pervenit*, declared that one of the just titles for demanding something from a loan is *lucrum cessans*, that is (as he explains in the bull) if the money had been otherwise invested, "either to acquire annual revenues, or even to engage in a lawful business," and to receive honest profits (4). 149.—Nevertheless, in order for this profit to be demanded as damages or lost profit, three conditions are required. The first is that the agreement for profit must precede the contract (except if the lender were forced to lend unwillingly, or if the borrower did not return the loan within the agreed time); and furthermore, that the borrower must also be informed of this title before the contract. It is not sufficient to presume that he would have consented to the promised profit, if he had been made aware of the just title; because for a contract, it is not enough to have an interpretive will, but an actual will is required. However, if the parties agreed to the contract in the best possible way, then Lessius, Tournhem, Salmeron, and Croix say that the promised profit can be demanded. Furthermore, Benedict XIV in the aforementioned bull prescribes: "Those who wish to be considered immune from all usury, should be warned to declare the contract to be made, and to specify the conditions, and what fruit they expect from the money (5)." 150.—The second condition is that, in the case of lost profit, more than the value of the expected profit should not be demanded, deducting the expenses and the price of the labor which would have been incurred in order to obtain such profit; not the entire amount, but a portion thereof, namely, the amount that the lender would have paid to others in order to be freed from the labor itself (6). 151.—The third condition is that the loan must be the true cause of the damage, or the cessation of profit; for if the lender had obtained that profit with other money, or with other labor to which he could to not have applied the money by engaging in

business; then he can demand nothing. But if the lender gave the money for a loan intended for business, and he did not intend to reserve other money for the needs of his family, or for any other purpose, then it is probable that he can demand *lucrum cessans* for the money lent, as Lessius, Lugo, Layman, Castrop, Valentia, Salmeron, etc., say; because in that case, the lending truly is the cause for which the expected profit ceases to accrue from the money, and the lender is not bound to expose the money to the borrower's business, if it was not intended for that purpose, but for his own purposes. However, I would not admit this in the case where, when lending the money, the lender intended to replace the business with that reserved money (7). 152.—The Reverend Concina adds a fourth condition to these three, namely (1) 2. 2. q. 62. art. 4. — (2) 2. 2. q. 78. art. 2. ad 1. — (3) 2. 2. q. 77. a. 1. Quær. 5. — (4) L. 5. n. 769. — (5). N. 769 et 775. — (6) N. 769. v. II. Conditio. — (7) N. 771.

[*Latin ed. p. 261*]

ON MUTUAL LOANS AND USURY. 249 In order that a loss or profit may be certain, it must be the case that opportunities for profit are provided. However, it is commonly stated, along with Sylvius, Navarro, Mald. Tap. Salas, Decoquer, Salm., etc., that it can be properly stipulated in a contract to receive a profit in return for certain titles, provided that these titles are probable, and provided that nothing is demanded beyond the value of the risk of loss, or the hope of profit, since to expose oneself to the risk of loss and to deprive oneself of the hope of profit are certainly worthy of a price (1). 153. — III. The title is the risk of losing the principal. This title is strongly disputed by some; but it is commonly and rightly admitted, even by probabiliorists, such as Fagnanus, Petroc. Cabassut, Tourn. Wigandt, and others, including Sylvius, Lessius, Molin, Lugat, Salmant, and others, provided that the risk is extraordinary, and not common. The reason is that to undertake such a risk is certainly worthy of a price, as St. Thomas teaches (2), who says: "A thing outside of danger is valued more than that which is in danger." And this is confirmed by what was expressed by the Council of Lateran under Leo X, in session 10, where it was condemned to receive something from a loan, provided that (note) there was no risk of loss, or expense, so that it might be recovered, the Council stating that the profit demanded in such a case was usury, "when it is sought without expense, without risk." It is also confirmed by a declaration of the Sacred Congregation of the Propagation of the Faith, approved by Innocent X, and reported by several important authors, namely Cabassut, Tournely, La-Croix, Bancel, and first by Hurtado, who presents an authentic copy confirmed by the hand of an apostolic notary; in which it is stated that it is possible to demand a profit from a loan beyond the principal, "on account of a probable imminent risk (3)." 154. The opponents cite the text in Chapter Naviganti, on Usury, where it is written that a contract to demand

something beyond the principal is usurious, when the lender assumes the risk of loss of the principal upon himself: the words of the text are: "Because (the lender) assumes the risk upon himself, he is to be considered usurious." But it is replied, 1. by many, that in the cited text, the particle "non" was probably omitted, which preceded the word "censendus"; thus, very probably, Tournely, Cabassut, Laym., Castrop., etc., on the basis of what is accepted from the context of the immediately subsequent words: "He" also... "is not to be considered usurious," etc., speaking of another case; otherwise, it would not agree with the preceding words: "he is to be considered usurious." But (whatever may be), it is replied, 2. with Fagnanus, that this applies to the external forum, which presumes in such a contract an usurious intention, and not to the internal forum. It is further replied (3) that this applies when the lender, by the very nature of the loan, intends to obligate the borrower to assume such a risk; for if the borrower offered a guarantee, the lender would be obliged to accept it, but not if he does not intend to obligate him (4). 155. It is helpful to know that the so-called "pious loans" were approved by the same Council of Lateran, in which a certain profit is demanded beyond the principal, on account of the expenses of the officials of the loan, and for the preservation of the pledges, which, when the time fixed for the restitution of the loan has elapsed, are returned to the owners if they are found; otherwise, they are applied to the poor, or to the increase of the loan fund itself. Some say that loans (1). Lib. 3. n. 770. — (2) Opusc. 73. c. 6. — (3) Lib. 3. n. 765. — (4) N. 765. v. Objections II.

[*Latin ed. p. 262*]

250 TRACT. X. CONCERNING THE SEVENTH PRECEPT OF THE DECALOGUE: This mountain [of provisions] should not be given to the poor unless they are in need, lest they later lack the means to assist other poor people, for which purpose such provisions are especially instituted.

156.—IV. The title [of a loan agreement] is a conventional penalty, namely, a pact whereby, if the borrower fails to make payment within the agreed-upon time, a certain sum, in addition to the principal, must be paid. This title is also commonly considered just by Soto, Lessius, Tournely, Cabassol, Henry de S. Ignatius, Wigandt, and the theologians of Salamanca, etc.; for such a penalty is not imposed, nor is it to be paid, with the intention of extortion, but with the intention of ensuring that the borrower makes the payment within the specified time. However, in order for such a penalty to be enforceable, three conditions must be met: 1. The delay in payment by the borrower must be significant and culpable; 2. The penalty must be moderate and proportionate to the culpability; 3. The borrower must have obligated himself to repay the principal at a time when he is truly able to return it; otherwise, the agreement is considered usurious.

157.—It is debated whether this aforementioned penalty is due before a judgment by the judge? Some deny it; but it is more likely that Lessius, Tournely, Sylvester, and the theologians of Salamanca, etc., affirm it; because such a penalty constitutes a part of the agreement, not a penalty in itself. And it should be noted that the pact called the "law of seizure," namely, that if the loan is not returned by the specified time, the lender seizes the entire collateral, can only be enforced if it was included as a conventional penalty with the aforementioned conditions; otherwise, it is usurious, and the lender, despite the agreement, must return the entire excess of the collateral beyond the principal, and furthermore, any profits derived from the collateral, if it is productive; therefore, the agreement, whereby the lender demands profits from the collateral given as security, is commonly called "Antichriseos" (usury), and is inherently illicit. An exception is made if such collateral was given as a dowry promised (but not yet established) to cover the expenses of marriage.

158.—In order to determine which agreements are permissible in a loan, it is necessary to consider the rule given by St. Thomas, namely, that any burden imposed that is worthy of a price is usury; but not if something is demanded that cannot be acquired with money, such as benevolence. Moreover, it is not permissible to demand a specific benefit in particular, as a debt of benevolence or gratitude, since proposition 42 of Pope Innocent XI condemned the practice of demanding something as a debt of benevolence and gratitude, such as, for example, if the lender obligated the borrower to perform a certain service for him; the reason is that gratitude can be expressed in many other ways, such as by praising, honoring, or benefiting the benefactor. Therefore, demanding a specific return is a burden that is estimable in price, and is therefore usury.

159.—Similarly, it is illicit to obligate the borrower to purchase necessities from the lender in the future, or to rent a house from him to sell grain, or to borrow money from him, or the like. It is said that to demand these things from the borrower at the same time that he requests the loan is not illicit, as taught by St. Thomas and others.

160.—It is also illicit to agree that, in exchange for money or other goods loaned, a different type of item will be returned, because this burden is also estimable in price.

(1) Book 5, n. 765, and following.

(2) n. 766.

(3) n. 767.

(4) n. 770 and 770.

(5) 2-2, question 78, article 3.

(6) Book 5, n. 767.

(7) n. 780 and 781.

[*Latin ed. p. 263*]

OF MUTUAL LOANS AND USURY. 251. It is debated whether it is lawful to make an agreement that a thing lent on loan be returned at a certain time in the same species and quantity, for example, if wheat is lent in August with the agreement that it be returned in the same quantity in May. The answer is that, when there is doubt whether wheat (and the same applies to other things) can increase or decrease in price in May, or if the lender stipulates that his wheat must be kept until May, then such an agreement is certainly lawful, provided that expenses or the risk of preservation are taken into account. But if the thing cannot decrease in price in May, and the lender was not certain that it would be preserved (whatever Lessius, Salm, Azor, Bonac, etc., may say), then such an agreement is usurious; for by obliging the borrower to return the wheat in May, when it is worth more, the lender intends to profit, and therefore the increase in value must be deducted from the amount to be returned. However, in the case of a loan of money, it is always lawful to agree that it be returned in the same amount, at least if the decrease is not morally certain (1).

161. It is commonly held among the Doctors that it is not unlawful for a lender to demand something from the borrower that is due by justice, for example, that the borrower cease from vengeance or unjust vexation, or that he pay a debt previously contracted (2). We say that it is due by justice because the rule does not apply if the thing was owed out of charity. Therefore, we say with Azor, Bonac, Spor, Salmant, etc. (whatever P. Concina and others may say) that if a loan is given to a doctor or lawyer who is obligated to heal or defend a case solely out of charity, it is not lawful to agree that he himself be obligated to perform these things; for, once an agreement is made, a burden of justice is added, which is worthy of a price (3). Similarly, it is said with Lugo, Laym, Bonac, etc., against others, that it is not lawful for a lender to obligate the borrower to remit an offense that he ought to remit out of charity, but that he may demand satisfaction by justice (4).

162. Finally, speaking of the obligation of usurers and others who cooperate positively and gravely against the will of the borrower, they are obligated to restore all usury exacted, but not the additions made from the usury, because this is the fruit of industry, which belongs to the one who employs it (5). It is probable that the heirs of usurers are not obligated in solidum to restore the usury, but each for his own share, as is deduced from chapter 9 of "Tua nos" on usury, and from book 1 of the Code of Delicts of the Deceased, book 4, title 17 (6).

163. Servants of usurers who cooperate in something that does not displease the borrower, such as carrying the pledge or money, or recording it in the books, or urging the payment of the usury with friendly words, are

excused from restitution; on the other hand, those who confirm a written agreement, or who force the borrower to pay by threats or other means, are not excused (7).

164. Finally, speaking of those who give advice or provide money to a usurer, they are excused from restitution, as Lug, Tol, Sylvest, and others commonly say, when they do so for the benefit of the lender (8). It should be noted that usurers are public infamies, and their wills are null; nor can they be admitted to Holy Communion, nor buried in a sacred place; and he who knowingly buries their bodies is, by that very act, excommunicated (9).

1) Book 5, n. 782.

(9) N. 774 and n. 777.

(8) Ibid.

(6) N. 778.

(10) N. 781 and 792.

(9) N. 789.

(7) N. 789.

(8) N. 788.

(9) N. 789, 2. Tenerarius.

[*Latin ed. p. 264*]

252 TRACTATE X. ON THE SEVENTH PRECEPTS OF THE DECALOGUE. POINT V. ON PURCHASE AND SALE. 165. Determination of price and object. — 166. On purchase. — 167. When does ownership transfer? — 168. On conditional purchase. — 169. Do risk and benefits always belong to the buyer? — 170. On a contract to demand fruits until payment. — 171. If purchased with borrowed money, or if a thing belonging to another is sold. — 172. On a just price. — 173. How does the price increase or decrease? — 174. On overpriced goods; and when can something be sold at a higher price? — 175 to 177. On sales in Asti. — 178. Whether, if there is a delay, or anticipation of payment, etc. — 179. On promissory notes. — 180. On a contract of redemption. — 181. On a contract of retention. — 182. On a lease and antichresis. — 183 and 184. On monopoly. — 185 to 187. On defects in goods. — 188. He who knows that the price will soon rise or fall, etc. — 189. On female vendors and procurers. — 190. If a thing is sold to two people. — 191. If the thing perishes, etc. 165. — Note 1: For a contract of sale to be valid, it is necessary to determine both the price (at least by assigning it to a third party) and the object, at least in measure, e.g., if wine of such a quality is sold at so much per cask; or at least by specifying the type, as when a net full of fish is sold (1). 166. — It is asked whether, after an earnest money deposit has been given, the one who gave it can withdraw from the contract. It is affirmed; for this is the custom. However, it would be different if the

earnest money were given only as a greater precaution. Moreover, it is rightly said by Father Concina (against Croix) that the one who gave the earnest money can withdraw, if the earnest money is returned, because most contracts are intended to be made according to the custom that is in use (2). 167. — Note 2: The contract of sale is perfected by mere consent; however, ownership of the thing is not transferred until delivery; indeed, even with delivery, ownership is not transferred unless the buyer pays, or at least offers the price, or provides a pledge, or a guarantee (commonly called a "Pieggiaria"), or at least gives a promise or assurance; as is stated in § Venditæ, Institute on Divided Things (3); see the statement in number 107. 168. — Note 3: When a purchase is conditional, upon the condition being fulfilled, the contract becomes valid from the time of the purchase, so that the benefits belong to the buyer, except if the condition was left to the buyer's discretion (4). 169. — Note 4: Although risk and benefits usually belong to the owner of the thing, nevertheless, in the purchase of a specific thing, even if the thing has not yet been delivered to the buyer, or if it has been delivered, but without a guarantee of price (in which cases, as stated above, ownership remains with the seller), the risk and benefits nevertheless belong to the buyer, as expressed in the following texts, § Cum autem, 3 of the Institute on Purchase and Sale, law Id quod. 7 of Periculum et Commodum, and law Post perfect. 1 c. of the same title. However, this is excepted if it has been expressly agreed otherwise, or if the thing has not been delivered, and the seller is in default in delivering it, or if the thing has perished through his fault, or has been damaged (5). But besides these excepted cases, just as the risk of the thing belongs to the buyer, so do the fruits of it (6). And the civil laws opposed to this point have been rejected by canon law, as they are favorable to usury, as the Salamanca theologians say (7). 170. — It is doubted whether the seller can agree from the beginning to receive the fruits until the price is paid, since ownership of the thing has already been transferred by delivery and a guarantee of price? Some deny this, but the common opinion and (1) Book 3, number 794. — (2) Ibid. This is questioned here. — (3) Numbers 795 and 796. — (4) Number 797. — (5) Number 798. — (6) Ibid. v. Ita. — (7) Tractate 14, chapter 2, number 17.

[*Latin ed. p. 265*]

ON THE PURCHASE AND SALE. 253. The more probable opinion, held by Sanch., Molin., Bonae., Petroc., and others, is that the seller can lawfully retain ownership of the thing until the full price is paid (1). 171. Note VI: If someone buys something with borrowed money, but in their own name, according to the law, the thing belongs to the buyer. However, Doctors make an exception if the money belongs to a church, or to a minor, or to a soldier (2). Conversely, if someone sells something that belongs to another, although the sale may be invalid with respect to the thing, the

seller nevertheless acquires ownership of the money. If the seller sold in bad faith, they would be liable for all damages to the buyer; if in good faith, they are not liable for damages or eviction, but they are liable to return the price to the buyer, even if the thing has already been evicted and returned to the owner, unless there is an agreement to the contrary, and they would not be liable for any eviction, as stated in the law, "Emptor." However, there are exceptions: 1. if there is an express agreement not to return the price; 2. if the seller has not become any richer, because perhaps the buyer gave the accepted price as a gift; 3. If the buyer knew that the thing was another's, or was obligated to another, according to the law, "Si fundum, cap. de Evict." But this applies to external justice; however, in conscience, if the price has not been assigned to the treasury as a penalty, the seller must always return it to the buyer (3). 172. Note VI: All, including ecclesiastics, must abide by the price set by the republic, unless the circumstances change, and a majority of citizens, knowing this, do not abide by the price (4). Except for taxes, every thing has its own price, which can be considered low, medium, and high, and any of these prices can be considered just. In this regard, it should be noted that 1. the price is determined according to the time of delivery of the thing, and the place where it is sold. It should also be noted 2. that the price of valuable and extraordinary things has a greater range than the price of ordinary and common things; for example, wine that is worth 5 can be bought for 4 or 6; if it is worth 10, it can be bought for 8 or 12; if it is worth 100, it can be bought for 95 or 105. This applies to ordinary things; but speaking of extraordinary and very valuable things, a house, for example, that is sold for 20,000, can be bought for 12,000 (5). It should also be noted 3. that if there is a loss of more than half the value in the price, the injured party can rescind the contract in court; but if the loss is less than half, the other party is also bound in conscience to make up the difference up to the just price. However, if both parties were ignorant of the just price, then the agreed price is just (6). Finally, it should be noted that generally, sellers are not trusted with lies; therefore, they are usually not liable for restitution unless the price exceeds the maximum, or unless they realize that the buyers have trusted them (7). 173. Note VII: The price can increase either due to the eagerness of buyers, or due to a scarcity of goods. Conversely, it can decrease due to a lack of buyers, or an abundance of goods. This rule must be given special attention in many questions that will be discussed later (8). It should also be noted here that the common estimation of the region where the thing exists makes any price just (9). 174. Note VIII: Regarding the buyer, he can buy a thing for a lower price if it is of little use to him, or if he is acting out of kindness towards the seller (1).

(1) Lib. 5. n. 798. v. Diximus.

(2) N. 799.

(3) Vide Castr. tr. 52. D. 5. p. 28. 2 n. 1. et Salm. tr. 14. e. 2. n. 51. eum aliis.
(4) L. 3. n. 863.
(5) N. 804.
(6) N. 805. et v. Quod si.
(7) Ibid. v. Hine etiam.
(8) N. 801. v. Notand. 2.
(9) N. 808. Notand. autem 1.

[*Latin ed. p. 266*]

TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. Some say that goods sold at auction decrease in price until they reach a very low level; but it is more likely, according to common opinion, that the decrease is up to one-third. The reason why the price of a good decreases in such sales is because the number of buyers is less frequent (1). And for the same reason, he who buys many items at once can also buy at a lower minimum price (2). On the other hand, the seller cannot sell at a higher maximum price, because the item would be useful, or because of the buyer's excessive desire (3). However, he can demand more if other circumstances intervene, namely: 1. if it is to his detriment, or if he suffers a loss (in which case the buyer must be warned); and this is permissible even if there is a fixed price, and even if the seller himself offers to sell; 2. if the seller is affected by a particular feeling towards the item he is selling (4); 3. if the items are rare, such as gems, paintings, animals, and the like. Can these be sold at the highest possible price? It is likely that they can; but it is more likely that they cannot, unless it is for the use of an honest woman (5); 4. if the item is sold piece by piece, the reasons for greater inconvenience that must be applied, and the reason for loss (which is commonly called "Sfraudo") that is usually suffered (6). 175. Note IX: Goods that are sold under the hammer, or that are carried around by saleswomen, can be sold and bought at any price that they can agree upon, according to the law in book 2, chapter on Rescission of Sales, provided that there is no fraud, either on the part of the seller, for example, if he conceals a defect in the item, or introduces fictitious buyers; or on the part of the buyer, if he prevents other bidders by deceit, threats, or undue persuasion (7). 176. Here, it is doubted 1. whether it is possible to prevent others from bidding through simple requests. Some deny this, but most allow it, according to Tourn., Lugo, Salm., Castr., P. Nav., Vega, Tapia, Conrad, etc. (8). 177. It is doubted 2. whether the buyer can make an agreement with others not to bid more. This case is rarely discussed by the Doctors. Diana, with P. Navar. and others, seems to allow this, as long as at least the minimum just price of the item is offered; but I, with de Lugo and other learned men I consulted, believe the opposite, in the case where the item is exposed under the hammer by order of the judge; the reason is that when the seller

is then obliged to give the item to the highest bidder, the buyer commits an injustice if, by offering only the minimum or even the average price, he prevents the seller from hoping for the average or maximum price to which he is entitled, namely, so that he is not prevented from obtaining it; for just as the seller, if another bidder fails, is in danger of giving the item at a lower price, and even at the lowest possible price; so, conversely, equity requires that one should not be defrauded of the hope of obtaining a higher price, if several bidders happen to appear, who increase the price through competition. Equity demands this, and this seems to be demanded by the law of initiation. 178. Note X: Precisely because of delay, or anticipation of payment, the price cannot be increased, nor decreased, unless another circumstance of danger, or damage, or loss of profit intervenes, about which the buyer must always be warned; as stated in number 149. And here it must be noted that merchants who sell at a higher price with expected money, find it difficult to be excused for the sole reason of loss of profit; because by selling with deferred payment, they withdraw a greater quantity of goods, and thus the deferred payment is restored to them (r) Book 5, number 802. - (2) Ibid. at the end, verse 2. Buyer. - (5) N. 806. - (4) N. 807. and verse Quer. I. - (5) L. 5, number 808. - (6) N. 809. - (7) N. 808, verse Note 2. - (8) Thus, Tourn., treatise on contracts, page 2, chapter 1, article 4, conclusion, verse. See also Queries at the end. Lugo, de contr., D. 26, number 45. Salm., ibid., title, chapter 2, number 58, with Palao, Trull. Tap., Diana, page 1, treatise 8, R. 76, with P. Navar., Reg. Vega, Contr. and Arriog., and book 5, number 803, verse. Sed. dub. 2. - (9) P. 1, treatise 8, R. 76. - (10) Disp. 26, number 45, at the end.

[*Latin ed. p. 267*]

ON THE SALE AND PURCHASE. 255. The delay (1) can be excused. Rather, the common opinion holds that such sales with delayed payment are likely to offer a just price, as Lugo, Lessius, Cano, Molina, Tolet, Sanchez, Castrop, Bonaventure, and Salm state, because in such sales there is a greater supply of buyers and a smaller number of sellers; and because there is always a common risk of losing the opportunity. And they say the same about buyers who offer a lower price for paying in advance, because in such purchases there is a supply of sellers and a multitude of buyers, and also some risk of not obtaining the item, or at least not obtaining it as desired (2). 179. And, following the same reasoning, Navarrus, Cajetan, Sanchez, Tournon, Anaclarius, Azorinus, Lugo, and others, along with St. Bernardino of Siena, and others, likely state that promissory notes, although liquid, may be purchased for less; because it is one thing to have money, and another to purchase a claim against it; which claim is commonly considered to be worth less, because these claims are not immune from some risk of collection, or at least of annoyance and expense. However, promissory notes which are commonly

called "instruments of credit" are to be excepted, for which there is no moral risk; provided that there would be no difficulty, inconvenience, or danger in collecting from the person to whom the demand is to be made (3). 180. Note XI. A contract for repurchase is lawful, provided that certain conditions are met, namely: 1. that the price is reduced, which can decrease up to one-fourth; indeed, some say up to one-third; and then the contract is valid, obligating the buyer to repurchase at the same price, even if the price of the item increases; 2. that the risk of the item is borne by the buyer; 3. that the property is repurchased with or without its fruits, as is determined at the time of delivery (4). 181. Thus, also according to the more probable opinion of Lessius, Lugo, Molina, Castrop, Silvestri, Navarrus, Bonaventure, Azorinus, and others, a contract for the redemption of property at the buyer's request is lawful, provided that the following conditions are met: 1. that there is no usurious intent; 2. that the price of the previous sale is increased; 3. that the seller is not obligated to redeem the property at the same price; but if the property deteriorates, he must pay only what it is worth at the time of redemption; and conversely, if the property increases in value, the seller benefits. And in this way, it is a true purchase, and not a loan, as the opponents claim; meanwhile, while the property is not redeemed, the risk belongs to the buyer, which is not the case with a loan (5). 182. The contract which is called "Mohatra" is certainly illicit, as is clear from proposition 40, condemned by Innocent XI. This contract is made when someone sells with an express or tacit agreement that the item will be repurchased for a lower price (6). Similarly, the contract which is called "Anticriseos," commonly known as "godere," is also illicit and usurious, namely, when someone grants the use of a productive property to another, and also gives him money for the use of it (7). 183. Note XII. A monopoly is prohibited, and it is established in the following two ways: 1. when someone prevents other goods from being introduced into the region, so that he alone can sell his goods, to the detriment of the citizens; 2. when one or more people buy all the goods, so that they can sell them at a higher price than they would have been sold for in the market, unless a monopoly had been established. However, if someone or several people buy goods after the citizens have already suf- (1) Book 5, chapter 810. — (2) Chapter 811. — (3) Chapter 829. — (4) Chapter 819. — (5) Chapter 813. — (6) Chapter 1151, see Note le. — (7) See Salm, Tractate 14, chapter 3, paragraph 36.

[*Latin ed. p. 268*]

256 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. Those who, knowing the value of goods, compare them to each other in order to sell them at some moderate profit, this is certainly permissible, as commonly taught by the Doctors. And Lugat, Melchior, Lessius, and Holzmüller state with probability that such merchants would not sin

against justice if they sold at the highest price, nor even against charity, provided they did not induce others to sell at a higher price (1). Therefore, if they conspired among themselves not to sell except at the highest price, it is probable, as Lessius, Viva, Lugat, Holzmüller, Molina, Bonaventure, Salamanca, etc., teach (against Tournhem, Sporl, etc.), that they would not sin against justice; nevertheless, they cannot be excused from a grave sin against charity, as is certain to all (2). 184. But if an unjust monopoly exists, whereby some sell at an excessively high price, is it permissible for others to sell at the same price? Salamanca, with Bonaventure and others, admit that the price has already become common. But this opinion is rejected by Rebell, Tapia, Dicast, and Concina, and it does not truly please them: because such a price, increased by injustice, is always unjust; and it should not be considered a just valuation, which arose from injustice (3). 185. It should be noted that, when speaking of a defect in the thing that is sold, the defect can be in the substance, in the quality, or in the quantity. If the defect is in the substance, then either the contract is null, or the seller must make amends for the damage, even if he had condoned the excess of the unjust price on his own part (4). And it should be noted that if the thing is better than what is sold, it can be sold at the common price, even if it is mixed with something of a worse condition; as, for example, wine mixed with water, provided the buyer does not buy it for preservation, because wine mixed with water is easily corrupted. The same is said of pharmacists who sell one thing for another at a lower price; provided that it is certainly of equal utility, and the price is reduced, as Sotus, Lugat, and the Salamanca theologians teach (5). 186. If the defect is in the quantity, then amends must also be made for the damage; but if there was once an unjust tax, or an unjust price due to a monopoly of buyers, then it is not improbable, as Lugat, Laym, Castrop, Salamanca, etc., say, that the seller may use a measure that is only deficient to the extent that the just price, which is the lowest, is reached (6). 187. If, finally, the defect is in the quality, then it is necessary to distinguish: when the defect is obvious, there is no obligation to manifest it, and if the seller does not manifest it, the contract is valid; provided that it is not known that the buyer was ignorant, and provided that the quality does not extend to the substance, as would be the case if the buyer had declared that he would only buy the thing with that quality. But if the defect is hidden, then the seller is certainly obliged to reveal it, unless he protests that he is selling it, as is commonly said, "as the sack of broken bones": and as is commonly practiced in markets; it should be noted, however, that in that case, the thing cannot be sold for more than the highest price, because account must be taken of the hidden defect (7). 188. It is doubtful whether one can sell at the current price a thing that he knows will soon be worth less. It is very probable that he can do so lawfully, as commonly taught by Cajetan, Lessius, Sotus, Castrop, Tournhem, and Salamanca (1). (1) Lib. 5, n. 814,

815, and 816. (2) N. 817. (3) Ibid., see here. (4) N. 819. (5) N. 8, Question 1, and n. 821. (6) N. 822. (7) N. 823.

[*Latin ed. p. 269*]

ON NEGOTIATION. 257 Bonac. with St. Thomas (against some), because in a sale, the future price is not considered, but the present price, which is estimated not according to particular knowledge, but according to common estimation. And likewise, it is permissible to buy goods at the current price, even if it is known that the price will increase shortly. And those who sell in this way, Less. Bonac. Tourn. Ronc. and Salm. say, do not even sin against charity, unless it is because the buyer would thereby be brought into grave necessity, or if, when he could sell to someone who would immediately consume the item, he were to sell to someone who would keep it. However, it must be noted that this applies when an increase or decrease in price is known through private knowledge; for if the knowledge were common, the price would already vary by itself (1). 189. — Note XIV, that he who receives goods for sale at a designated price, cannot retain more than he receives from it, even if he sold it in a more distant place and with greater effort; unless, that is, 1. he employed such extraordinary diligence that the price corresponded to the profit received; 2. if he improved the item; 3. if the profit was of little importance; 4. if it was tacitly agreed with the owner that he would give nothing more to him, besides the designated price, as if the owner had assigned him no salary; 5. if, having exercised ordinary diligence, he himself, as a broker, bought the item at the designated price, and then sold it at a higher price. The same is said relatively of him to whom the purchase of an item had been entrusted (2). Tailors who offer to buy cloth cannot demand more than the price they pay, unless it is that the merchant, truly because of a particular friendship, or because he frequents his workshop, remits something from the common price (3). 190. — Note XV: Ownership of the sold item is acquired by the one to whom it is delivered after the price has been paid, or after a given promise of payment, as stated in number 167. But if someone buys in bad faith, knowing that it had already been sold to another, then he is bound to return it to the first buyer, as the Doctors commonly teach; but not before a judgment, unless 1. he himself induced the seller to sell the item to him; 2. if the first buyer was a pious person, a minor, or a religious order; 3. if he himself was a donor, because then he is bound to return it to the buyer, if he requests it within a year, according to the law, title 1, "de fraud, etc." (4). 191. — Note XVI: If a sold item is specifically determined, namely, this house, this barrel, etc., then when it perishes, it perishes to the buyer; provided that the seller is not in default in delivering the item. But if it is not specifically determined, e.g., ten sheep from this flock, or determined only by measure, e.g., this barrel of wine at so much per cask, then before measurement or delivery, the item perishes to the seller; thus according

to the law, "de Peric." But the increase or decrease of the item pertains to the buyer, as Less. Bonac. Salm. etc. say (5). However, when the item has already been delivered, the risk pertains always to the buyer, even if the price has not been paid, nor has a promise of payment been given, as we said above in number 169 (1). Lib. 5. num. 824. v. 12. Etsi. — (2) N. 825. v. Quær. et Bene autem, — (3) N. 826. — (4) N. 827. — (5) N. 828. 17

[*Latin ed. p. 270*]

TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. POINT VI. ON COMMERCE. 192. To whom commerce is forbidden; and when it is a mortal sin; and whether a cleric who conducts business through others, or for others, sins. — 193. Whether it is permissible for a cleric to buy sheep for their own pastures, etc. — 194. Whether it is permissible to sell at a higher price in order to buy at a lower price. Whether it is permissible to buy wool, etc., if it is done out of necessity. — 195. Whether it is permissible for a cleric to be a guardian, factor, etc.

192. Commerce is properly said to occur when something is bought with the intention of selling it later at a higher price. This is strictly forbidden to religious and clerics in the sacred Constitutions; whereas, it is permitted to lesser clerics, unless they are beneficed, as the common doctors state from canon 1, q. 26 (1). Therefore, a cleric or monk sins, and sins gravely, if he frequently engages in commerce, even if there is no apparent scandal, and even if the matter is not immoral or serious, as Lessius, Lugo, and Salm say, along with others (contrary to a few). However, they excuse it from being a mortal sin if this occurs two or three times with a matter that is not serious, or once in a serious matter (2). And Layman, Castrén, Salm, etc., also excuse it if the business is conducted through another, provided that (as Lugo and Salm say) the cleric's supervision is not excessive (3). However, Benedict XIV declared in an Apostolic Bull that a cleric who conducts business for others incurs the same penalties as if he were conducting business for himself; unless it is the case that the business had already been begun by laymen, and could not be abandoned without detriment; for then the cleric may continue it, but only temporarily, and through the agency of a lay person, and with the permission of the Holy See (4).

193. It is not forbidden for a cleric to buy sheep in order to raise them on his own pastures and sell them, or to sell their offspring, wool, etc.; this is the opinion of Lessius, Lugo, Layman, Roncaglia, Castrén, and Salm; but we say that it is not permissible to do this by leasing other people's pastures, since the Council of Chalcedon forbade (in cap. Pervenit, 21, q. 3) leasing other people's pastures in order to sell the fruits thereof. However, whether it is permissible to lease other people's pastures in order to raise one's own sheep and then sell them, Layman and Sporer deny; but Salm and Viva affirm, provided that there is no scandal; and this opinion seems to me to be very probable, since there is no law that expressly forbids it (5).

194. It is permissible for a cleric to sell at a higher price in order to buy at a lower price. And it is also permissible to sell something at a higher price if it was bought not with the intention of selling it, but of keeping it. Likewise, it is permissible to buy more in order to secure one's provisions; and then to sell the surplus. Moreover, it is permissible to buy colors in order to sell paintings, and wool in order to sell cloth, provided that no other workers are employed to do this, as Lugo, Salm, Molinæus, etc., say (6). Furthermore, it is permissible for a cleric to engage in commerce properly so called, when it would be advantageous for his own and his family's support, as is stated in c. Multa, ne cler. vel mon. And for this, a serious necessity for maintaining a decent state of life is sufficient, as is more probably and commonly stated by Castrén, Sporer, Croix, and Mazzotta, contrary to Layman, who admits only the sustenance of life (7).

195. It is forbidden for a cleric to act as a guardian, tabellion, or to exercise any public office for which he is required to render accounts of his administration. And if any cleric exercises any of the aforementioned offices, he will not be able to be ordained until he has rendered accounts, or at least has provided a bond. But this does not apply to (1) Lib. 3, no. 83x. — (2) Ibid., v. Non peccat. — (3) No. 833. — (4) N. 852. — (5) N. 835. — (6) N. 856. — (7) N. 837.

[*Latin ed. p. 271*]

OF CENSUS. 259 Concerning the administration of pious places, wards, and widows. It is also forbidden for clerics of secular status to manage censuses; however, this applies in the case (as stated in c. Sed. nec, 4, de cleric.) where a cleric, in order to fulfill this office, would neglect his proper ecclesiastical ministry: "If anyone is removed from the ecclesiastical ministry" (these are the words of the text) "for the reason that, neglecting his clerical office, he immerses himself in the currents of the secular world; and in such a case, the cleric would also incur suspension from his office, according to the judgment to be rendered."

POINT VII. OF CENSUS. 196. What is a census? — 197. Conditions required by Nicholas V. — 198. Conditions required by St. Pius V. — 199. Is a personal census permissible? — 200. Is a redeemable census permissible on the part of the buyer? — 201. Does a census perish when the fundi perishes? — 202. Can a census be constituted with money previously owed?

196. A census is a contract for an annual income, whereby someone demands a certain sum (e.g., 100) annually, in hundreds, from a certain fruitful fundi. This contract is permissible only if the conditions are met; for it is a true purchase whereby he who gives the money does not purchase a pension, but the right to receive a portion of the fruits of the fundi (1).

197. Regarding the conditions, it should be known that in the bulls of Nicholas V and St. Pius V, the following are required: In the bull of Nicholas V (which is in force in our Kingdom of Naples), I. that the census

be constituted over a certain, specific thing, and generally over other goods; II. that there be a pact of redemption at the same price; III. that the pension not exceed ten in a hundred (2).

198. In the bull of St. Pius V, I. it is required that the census be over a stable and productive thing; otherwise, a perpetual holding or another census suffices; II. that the price be paid in money; III. that there be no pact to pay the pension in advance; IV. that the seller not be obligated to substitute another fundi if the obligated one perishes; V. that the seller not be deprived of the right to sell the fundi with a mortgage; VI. that no penalty or interest for lost profits be agreed upon if the pension is not paid; VII. that no new census be created from unpaid pensions; VIII. that the buyer not be able to demand the price at his own discretion, and that the seller be always able to redeem the census; otherwise, it is the common opinion according to natural law that it is possible to agree that the census be irredeemable; IX. that the census not be sold to others for more or less, unless it is because the census would not be liquid (3). But it is commonly noted that the bull of St. Pius V was not accepted in many kingdoms, namely in both Sicilies, in Spain, in Germany, in France, in Belgium; indeed, the Continuator of Tournai affirms that it is not observed even in Rome. And where it is not accepted, the common opinion is that it is not binding (4).

199. It is doubted 1. whether a personal census is permissible? Some deny it, but many serious authors more probably and commonly affirm it, speaking according to natural law; thus, Sotus, Lessius, Merbesius, Tournai, Habert, Wigandt, Castrop, Roncaglia, etc., because just as in a real census, the right to receive the fruits from the fundi is purchased, so in a personal census, the right to receive the fruits from the industry and labor of someone already engaged in such a profession, e.g., a painter, a merchant, etc., is purchased (5). This is said with regard to natural law, for according to the bull-

(1) Lib. &. num. 85p.

(2) N. 845.

(3) N. 846 et 847.

(4) N. 849.

(5) N. 846.

[*Latin ed. p. 272*]

260. TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. Now, following the example of St. Pius, it is required that a completely stable foundation be established (where it is received), namely, the *bulla*. 200. — It is doubted whether a contract of this kind is permissible if it is agreed that the rent shall be redeemable not only by the seller, but also by the buyer. Some, such as Lessius, Layman, Castrop, etc., admit it, provided that the conditions are observed which we have

previously enumerated (n. 181) for a pact of redemption of the property. But others, such as Soto, Covarrubias, Salm, etc., deny it, and this opinion is undoubtedly to be preferred, since all agree that in such a contract there is at least the intention of usury (1). 201. — It is doubted whether, if the property perishes without the fault of the seller, the rent also perishes, according to the aforementioned *bulla* of St. Pius. Salm, Soto, Castrop, etc., deny this, saying that in such a case the seller is bound to provide another property. But we maintain the opposite, along with Lessius, Lugo, Roncaglia, etc., because in a contract of rent, the person is not primarily obligated, and the property is accessory (as the opponents claim), but rather the property itself, with the sale of the right to its fruits: therefore, if the property perishes, nothing further is owed. And from this, we conclude that it is permissible to agree to pay a pension (provided it is reduced), even in lean years; but it is not permissible to agree to pay it, even if the property perishes (2). 202. — It is doubted whether a rent can be established on money which the seller previously owed to the buyer. According to the *bulla* of St. Pius, it cannot, because it requires that the money be specified. But, speaking of natural law, it is not improbable that it can be done, according to Navarret, Lessius, Valentia, etc., since a rent is the same as any other purchase, which certainly can be made with money that is owed (3). PARAGRAPH VIII. ON EXCHANGE, LEASE, EMPHYTEUSIS, FEUD, AND RECEIPT. 203. On exchange and its species. — 204. He who receives false money. — 205. On lease. — 206. On the succession of the lessor. — 207. In the case of sterility, etc. — 208. Whether the right to beg can be leased. — 209. If a bill-poster profits by undertaking two tasks. — 210. Whether a salary is due to a sick servant. — 211. On emphyteusis. — 212. On feud. — 213. On receipt. 203. — EXCHANGE is a contract by which a money-changer exchanges money with another money-changer for some profit, apart from interest. It is of four kinds: minute, by letter, real, and fictitious. The minute (or manual) exchange is permissible, and it occurs when less money is given for more, or vice versa. Similarly, an exchange by letter is permissible, and this occurs when the money-changer receives money from another money-changer to be paid elsewhere. However, according to the constitution of St. Pius V, the payment for such an exchange must not be delayed beyond the stipulated time. The real exchange, on the other hand, occurs when the money-changer gives money, so that later he will receive it elsewhere from the money-changer through his agent; and this too is permissible. Finally, the fictitious (or pretended, as it is also called) exchange occurs when only a different place is pretended where the payment must be made, and in the meantime the money-changer demands a profit; this is undoubtedly illicit (4). The so-called *Colla Ricorsa* exchange is also included in this species of exchange, which (to put it briefly) is an exchange with a double pretense (5). The Frankfort exchange, namely, is one in which merchants

giving exchange agree to pay at the next fair, so that the more the days pass—

(1) Book 3, number 843, question.

(2) Number 847.

(3) Number 846, second part, on rent.

(4) Numbers 850 to 854.

(5) Cited in number 854, question.

[*Latin ed. p. 273*]

OF EXCHANGE, LEASING, ETC. 261. It is permissible to demand more [interest], provided that a just compensation is given to the merchant for the loss incurred (1).

204. It should be noted that if one receives counterfeit money by chance, he cannot spend it; and if he does spend it, according to the more probable opinion, he is obligated to make restitution. However, Croix and Sporer state that this should be understood only if the material of the money is false, but not if only the image of the prince is counterfeit.

205. A lease is a contract by which one gives another a person or his property for use in exchange for a certain payment.

Note 1. If the property becomes useless, the lessee is no longer obligated to pay the promised rent (2).

Note 2. Ordinary expenses of minor importance are the responsibility of the lessee; but extraordinary expenses (provided they are useful) are the responsibility of the lessor. However, if the lessee has obligated himself to make improvements, it is understood that he has obligated himself to do so at his own expense (3).

Note 3. If the property is lost, the lessee is obligated to nothing, unless the lessor proves his fault.

Note 4. The lessor cannot reclaim the property, except in the following cases: 1. if the lessee does not pay the rent for two years; 2. if the property is necessary to the lessor; 3. if the land cannot be otherwise repaired; 4. if the lessee abuses the property, for example, if he keeps prostitutes there, or destroys it, etc. (4).

206. Note 5. A universal heir, that is, the heir, cannot evict the lessee before the agreed-upon time; however, a particular heir, such as a legatee, donee, or purchaser, can. This is derived from the law "De Emptore" in the Corpus Juris Civilis, Title on Legacies. Some doctors, however, make an exception if the land has already been cultivated or sown; but I do not see how this exception can be valid, since the law (as expressed in the law "Qui Fundum," 25 ff., on leases, where the discussion is about a legatee) already gives the lessee the right to sue for damages suffered, even against the heir (5).

207. Note 6. The loss of fertility, in itself, is the responsibility of the lessee; but, in fairness, if the lessee is not at fault, and the infertility is extreme (such as if the land does not produce even half of the rent for a year, as Lessius, Lugo, etc., say), then a remission is due, as stated in "c. propter, de locat." and in law 8, chapter of the same title. And if it produces nothing at all, nothing is due (6).

208. Doubt 1. Is it permissible for a poor person to lease the right to beg? Some affirm it, but we deny it, except in the case in which the poor person is unable to beg himself (7).

209. Doubt 2. If a messenger undertakes to execute two commissions, can he receive the full payment from both? Certainly, a coachman can, due to the custom that prevails. As for others, it is probable, as P. Concina says, that he can only demand half the payment from each; but it is also probable, as Lessius, Layman, Castrop, and LaCroix say, that he can demand the full payment from each, since it may happen that the work is useful to both (8).

210. Doubt 3. Is the master obligated to pay a salary to a servant for a year if the servant is sick for some months? We say, with the common opinion (contrary to a few), that he is not obligated, unless there is a custom to that effect in a particular place. And we say, with Lugo and others (contrary to Azorius), that he is not even obligated to pay for the expenses of the illness, unless the servant is in grave necessity (9).

(1) Book 3, cited, n. 854. See Questions.

(2) n. 857 ad 2.

(3) n. 867.

(4) n. 858.

(5) n. 858 ad 11. et 859.

(6) n. 860.

(7) n. 861.

(8) n. 862.

(9) n. 864.

[*Latin ed. p. 274*]

262 TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. 211. An Emphyteusis is a contract whereby the lord grants another a permanent right to use a property, or at least for 10 years, for improvement; so that the lord retains direct ownership, and the beneficial ownership is transferred to the emphyteuta, with the obligation to pay an annual rent. If this rent is not paid for three years, the lord can reclaim the property, if it is secular property, within two years; if it belongs to the Church, within three years. This rent is always due, even if the property is partially destroyed, unless the entire property is destroyed, and even if there is a significant loss of profits, provided the rent is not excessive and

roughly equal to the profits; otherwise, equity requires that it be reduced (1). 212. A Feud is a contract similar to an emphyteusis, in which a noble or commoner is granted land by a lord, with the obligation to pledge fidelity and personal obedience to the direct lord (2). 213. A Libellatic Contract is when an emphyteuta or feudatory transfers the same property to a third party under the same conditions, and this contract is also called a sub-emphyteusis, or sub-feudation (3). PARAGRAPH IX. ON BETTING AND GAMBLING. 214. Concerning betting, whether it is permissible, and what if one party claims to know for certain the outcome of an event? 215. Concerning gambling by family members and religious. 216. Concerning fraud. 217. Concerning prohibited games, whether they are prohibited for laypeople; and whether a winner can retain the winnings. 218. Whether the loser is obligated to pay; what if there is an oath to pay and not to seek reimbursement? 219. Concerning prohibited games for clerics. 220. Concerning religious. 221. Concerning bishops. 214. A BET (commonly called a "scommessa") is when two parties, wagering a sum of money on the outcome of an event, promise to pay the amount to the one for whom the truth prevails. These bets are not prohibited (at least not severely) unless they are made under sinful conditions, or if those who are betting against each other drink more wine than the other; or if one bets that something will only be lost if a certain sin is committed, because in that case, he exposes himself to a greater danger of sinning. Conversely, if one bets that something will not be a sin (4). However, for these bets to be just, equality is required in both the premium and the uncertainty surrounding the event; but if someone ever claims to know for certain something, and another, despite this, still wants to make a bet, some say that he can retain the premium, because in that case, the other party relinquishes his right; but we believe the opposite, along with Liguori and La-Croix, when the other party also claims to have certainty in his assertion: because in that case, the first party does not have the intention of yielding, but is induced to bet due to his own error, and for that reason, the other party has no right to retain the premium. Conversely, I would say, if the first party already doubts, because in that case, the deception ceases, and he truly intends to relinquish his right (5). 215. When dealing with gambling, it is necessary to distinguish between gambling in general and prohibited gambling. Regarding gambling in general, it should be noted that 1. the winnings of a family member must be returned, unless it is from his own property in Louth, or something similar; or if there is the consent of the father, or if the amount is of little importance; or if a reasonable portion is deducted from the allowance that the father provides. The same applies to wives and religious. Conversely, these individuals are obligated to return the money they have earned from others (unless it is a small amount), even if others knew that these dependents did not have their own property

(6).

[*Latin ed. p. 275*]

OF GAMBLING AND GAMES. 263. The question arises whether religious men who have a general license from their superiors to spend their funds at their discretion, sin against poverty if they spend it on games? And are the winners obliged to make restitution? Many authors, such as Suar., Lugo, Hurtad., Rebel., Salas, Med., etc., say that it is probable that they do not; firstly, because the superior then removes the impediment to the vow, and secondly, because at least then the license is presumed to have been granted by the religious order, which, although it allows for a certain degree of freedom, does not extend to the substance of the matter. Nevertheless, we say, along with Navar., Less., Sanch., Salm., etc., that it is absolutely probable that the opposite is true, because such a license is not presumed to have been granted by the prelates, nor can the prelates grant it, even if they wished to; for they are merely simple administrators, and not the lords of the monastery's goods (1). 216. — Note 2. If a player uses unjust fraud, e.g., by marking cards or changing dice, he must restore the profit, and also the amount that the other party reasonably expected to gain. This refers to unjust fraud, because it is permissible to use the wiles that the rules of the game and custom allow, such as observing cards that another has negligently exposed, or recognizing cards that can be recognized from their external appearance due to some accidental mark (2). 217. — Regarding prohibited games, it should be noted that all games of chance (which are called games of dice) such as games with dice, which are commonly called bassetta, primera, etc., are forbidden both by canon law, namely, canon Episcopus, dist. 35; and c. Clerici, de vita, et honest. Cleric.; and by civil law, L. alearum, de rel. et sumpt. fund. Furthermore, a distinction must be made in this matter between laymen and clerics. As far as laymen are concerned, it is commonly held among doctors that such games are not forbidden under penalty, because the aforementioned canon Episcopus is superseded by custom, and the civil laws regarding these matters are penal, giving the person who is defeated the right to recover the amount lost (3). From this, it follows that the winner can retain the profit, until he is obliged to restore it by a judge's decision, according to common law (4). And this is true even if he played with the intention of recovering, even if he lost (5). 218. — It is also the common opinion, and a more probable one, with Sanch., Less., Lugo, Viva, Nav. Tolet., Laym., Mol., Salm., etc. (against Sayr., Bann., and others), that he who loses is not obliged to pay; because when the law grants him the benefit of recovering, it also grants him the benefit of not having to pay, as is deduced from another law, Creditori, c. de Pactis, where it is said: "It is in vain to pay what must be immediately recovered" (6). If, however, he wishes to compromise, he can do so, even if he did not intend to go to court (7); and even if he waived the benefit of the law,

because when the law is enacted for the common good, its waiver is null (8). However, (it is limited) that neither party has made a promise confirmed by oath, not only regarding payment, but also regarding non-recovery: for the law forbids playing such games, but not paying what has been lost; therefore, neither of the players can even ask for the relaxation of the oath, as long as the third party is prejudiced (9). And he who has lost, if he has already paid, cannot compensate himself, unless he goes to court, even if he has not sworn not to recover (10). But if he requested the rescission of the contract, and the other party refused, see note 125. 219. — As far as clerics are concerned, there is no doubt that clerics (1) Lib. 3. n. 875; and l. 4. n. 31. — (2) N. 882. — (3) N. 885. — (4) N. 867. — (5) N. 889. — (6) N. 896. — (7) N. 894. — (8) N. 891 et 892. — (9) N. 893.

[*Latin ed. p. 276*]

264 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. Those, however, who are in Holy Orders or who have received ecclesiastical benefits, though the prohibition against gambling may have lapsed for laymen, sin mortally if they engage in games of pure chance, as explained above, and they frequently do so, even if in small amounts; for such games are a notable disgrace to the ecclesiastical state. The same is said if they wager a large sum, even if rarely; at least if a grave scandal were to arise from this, as Laym states (1). I speak of games of pure chance; for simple games of cards, in which winning depends as much on chance as on skill, such as are called games of recreation, e.g., tressette, ombre, and others of that kind, are not forbidden to clerics, at least by current custom, unless there is a scandal, or a specific prohibition for a particular individual (2). 220. Now, speaking of religious, if these are of a stricter observance, such as the Capuchins, the Theresians, the Jesuits, the Alcantarines, and similar orders, they are not excused from a grave sin if they play games of chance, even once; and those superiors who permit this are even less excused. And I believe I should say the same if, for any card game, even for the sake of recreation (as stated above), they were to play, at least if they played once and again; either because of the scandal to laymen, or because of the abuse that would result. As for other religious of a looser observance, as was said of clerics, so too the Doctors say that they gravely sin if they play games of pure chance, frequently, or in excessive amounts, besides the sin against poverty, as will be said in Tract. 13, nos. 13 and 14. If, however, the game were simple (as explained above), Peyrin, the Decrees of Salm, etc., excuse them from a grave sin, and even from a lesser sin, as they say, if they play for the sake of amusement; but such recreation always seems indecent to me for a religious, and I do not see how it can be made honorable by any use (3). 221. But if a bishop were to play dice, even once, or frequently, or were to play cards for amusement, I do not know how he could be excused from a grave scandal. And I say the same of a prelate who frequently and

deliberately attends games of chance. But as for clerics and religious who attend, although this is also forbidden by the canons (cap. Clerici, de vita, et honest. Cler.), nevertheless, the Doctors commonly excuse them from a grave sin (4). POINT X. ON PARTNERSHIP. 222. Conditions for a just partnership. 223. The principal must first receive his capital. 224. The value of labor, and of the benefits, and of the risk, which pertain to the principal, must be considered. 225. The loss of the risk which pertains to the principal. 226. On partnership with animals, concerning the safe keeping of animals, and on the agreement to replace dead animals. 227. On a contract of three contracts. 228. Whether a son, by engaging in business with his father's money, etc. 229. On partnership between brothers. 230. How many ways can a partnership be terminated? 222. A partnership is an agreement in which two or more contribute money and labor, in order to make a common profit, or to share a common loss. The conditions of a partnership are three: I. that it be entered into for a lawful purpose; II. that there be equality between the estimation of labor and the contribution of money; III. that each partner should bear the burden of losses and expenses which arise from the business, but the loss of the risk should pertain only to the principal (5). 223. From this it follows that 1. if one contributes money, and the other contributes labor, when the partnership is terminated, the principal's share must first be returned, and (1) Lib. 3, nos. 397 to 398. (2) No. 906. (3) No. 901. (4) Nos. 902 and 905. (5) Nos. 904 to 906.

[*Latin ed. p. 277*]

OF PARTNERSHIPS. 265. Furthermore, it must be understood that the remaining share is to be divided, as Lugo, Bonac, Cabassut, Petroc, and others rightly teach (regardless of what others may say), because just as a share lost entirely is lost to the owner, so too, while it exists, the entire share is owed to him. It is not valid to say that if one contributes labor and the other money, it is fair to divide the entire share at the end; because in that partnership, he who contributed the share did not contribute money, but rather the benefit of that share; therefore, if one contributes a ship and another labor, upon the completion of the voyage, the entire ship undoubtedly belongs to the owner, who provided the benefit of the ship; similarly, if one contributes a share, that entire share belongs to the owner (1). 224. It follows that, in making the division, first (as has already been said) the capital must be set aside for the benefit of the owner; then the profit must be divided, taking into account the proportion of the value of the labor contributed by the partner, and the value, not of the share itself (as Cabassut contends), but of the benefit of the share provided by the other party, according to the common estimation of the profit that money can produce when applied to business, as Castrop, Ronc, and Rebell rightly say. In this case, it may sometimes happen that the value of the labor exceeds the value of the use of the money, so that it is just to make an agreement (which

would otherwise be unjust) to divide even the capital. It should be noted, however, that in some places the value of labor is so low due to local custom or the abundance of workers, that the worker may rightly be considered to bear part of the risk of the share, even though the risk itself is entirely the owner's (2). 225. It follows that the loss of the share belongs entirely to the owner, even if the share is lost before the worker contributes his labor (as some Doctors incorrectly claim), because, as has been explained above, it is not the share itself that is contributed, but only the use of it. Therefore, if it happens that the share is lost at the beginning of the partnership, the owner contributes nothing from the use of the money; and therefore, the worker is not obligated to anything, even if he contributes no labor (3). 226. It follows that an agreement for a partnership of livestock with a clause that it is "safe for the owner," namely, that upon the termination of the partnership, the livestock must first be restored in the same number and value, even if they are dead or have deteriorated, and then the remainder is divided, is unjust, because the loss of the share (as has been said) belongs entirely to the owner, and the owner is not responsible (4). And so we say with Tamburrini, Sylvani, Angelo, and others (contrary to Azor, Ronc, and others), that it is not permissible, in itself, to make an agreement, during the partnership, to replace livestock that die with offspring, because offspring, as fruits of the partnership, should be divided, not substituted, and such an agreement would be to the detriment of the owner (5). However, it should be noted that if livestock are lost, the owner must prove that they perished without his fault, as Pontanus and Tournon note, from the law "With two witnesses," 52, § Damna ff. Pro socio (6). 227. Here, however, the famous question is raised: whether it is permissible to demand a certain profit, with the capital preserved, through three types of contracts: partnership, insurance of the share, and insurance of the profit; against which, he who contributes money must yield a larger share of the profit, which he would probably receive if these assurances were in place. Many Doctors, such as Merbes, Concina, Habert, and Tournon, deny this, because (as they say) such an agreement, with the share and profit insured, would no longer be a partnership (1).

(1) Lib. 3. n. 907.

(2) Ibid. q. 2.

(3) Ibid. q. 5.

(4) N. 909. q. 5.

(5) Cit. n. 909. q. 2.

(6) Ibid. v. Hic, Operæ.

[*Latin ed. p. 278*]

266 TRACT. X. ON THE SEVENTH PRECEPT OF THE DECALOGUE, concerning its nature and how it relates to the matter at hand: that one who

lends money runs a risk, and therefore it should be considered a loan from which no profit can be demanded. However, others more commonly admit that, as Navar, Tolet, Less, Lugo, Castrop, Bon, Ronc, Salm., etc., state, these three contracts, if entered into separately, are already just, and they also intend them to be so when they are made with the same person. Furthermore, they add, it is not true that such a contract becomes a loan, because the one who receives a loan can freely dispose of the money; but here, the partner must necessarily contribute to the transaction, which fundamentally changes the nature of the loan. It should be known that this threefold contract has been approved by the theological faculties of Cologne, Treves, Salamanca, Mainz, and others, as reported in a book published in Paris in 1745, entitled: "Exam. theolog. sur la société du prêt à rente." However, I would say that this contract should never be entered into without the advice of theologians. 228.—Question 2: Can a son who is engaged in business with his father receive a share of the profits corresponding to his labor and industry? Ronc. affirms this in the case where the son conducts the business in his own name, because, he says, after deducting the value of the sustenance he receives from his father, he could take as much as the father would have paid to others for such work. But we cannot agree with this opinion, because although it is probable, it is also probable, according to Molinæ, Lug, Sylvest., and others, that a son who lives with his father cannot compensate himself for his labors with a salary that would have been paid to an outsider, provided that the labors are not excessive (1); and since we are dealing with compensation, for which a certain and liquid right is required, the son cannot make this compensation to himself without the father's consent (2). 229.—It should be noted that among brothers, a partnership is not understood to exist unless all the brothers are engaged in the same business, or if one of them conducts the business, and the others do not contribute their own property beyond the common property; for if one contributes his own property, while the others contribute only the common property, then the former can compensate himself according to the excess that he incurs from his own property, or from his own labor in the business. But if one brother, while the others are absent, conducts the business using only the common property, then the partnership is understood to continue until the other brothers demand a division (3). 230.—Finally, it should be noted that a partnership can be dissolved in many ways: I. when the business is concluded and the predetermined time has elapsed; II. by mutual consent of the partners, even tacitly, e.g., if one of them begins to conduct business separately. However, neither partner can withdraw from the contract, unless it is necessary for the public good, such as if one of them would cause harm to the partnership, or if one of them does not abide by the agreements; III. by the death of one of the partners, because the partnership does not pass to the heirs, unless it is with respect to businesses already begun, or unless there is a legally binding agreement

with the deceased partner, as Bonac. says; IV. by exile, or by entering a religious order; V. if one of the partners, due to illness or another necessary cause, is no longer able to fulfill his part; VI. if the contributed money is lost; VII. if the circumstances change so that the partnership becomes unsuitable for its purpose (4). (1) Lib. 5. no. 544 and also 488 ad v. III. in fin. — (2) No. 910. — (3) No. 907. q. 5. — (4) N. 907. q. 6.

[*Latin ed. p. 279*]

OF INSURANCE, GUARANTEE, ETC. 267. POINT XI. OF INSURANCE, GUARANTEE, PLEDGE, MORTGAGE, GUARDIANSHIP, AND TESTAMENTS. 231. Concerning insurance. — 232. Concerning guarantee. — 233. Concerning pledge and mortgage. — 234. Concerning guardianship and curatorship; and whether wards can obligate themselves and make donations. — 235. Concerning testaments. If the will of the testator is established, etc. If only one witness is present, etc. — 236. Concerning the obligation to leave property to virgins. Whether the last wishes can be changed by the Pope or a bishop. — 237. Concerning the obligation to leave property to children, brothers, or other needy relatives. — 238. In which cases a father can disinherit his children. 231. — CONTRACT I. Of insurance is that in which one undertakes the risk of another's property for a just price, obligating himself to compensate for it if it is lost. For this contract to be just, it is required that the outcome be uncertain, at least with regard to present knowledge (1). 232. — II. Guarantee (commonly called "Pieggeria") is when one undertakes to fulfill another's obligation, if the principal debtor is unable to pay. Therefore, the principal debtor must be discussed first; and if the principal debtor is not liable for anything, the guarantor is also not liable for anything. It is always permissible to accept a price for a guarantee, even if there is no risk, as the Doctors commonly hold against a few; because the assumption of such an obligation is a valuable consideration (2). 233. — III. Pledge and mortgage are similar to each other, in that a pledge is when the debtor gives the creditor a movable thing, while a mortgage is when he gives a fixed thing, to secure the debt. The creditor cannot use the pledge without the consent of the debtor; and if he does use it, he must account for the fruits he receives. However, the aforementioned consent is presumed, if the use does not harm the owner, as P. Viva says, as if the pledge had been freely given, and so forth. Sacred things, such as chalices, vestments, etc., cannot be pledged, unless to assist the poor, or churches. Also, it should be noted that the contract called "Antichriseos," commonly called "à godere," is illicit (as stated in n. 182), unless there is a just title of loss, or loss of profit, or a conventional penalty (3). 234. — IV. Guardianship and curatorship are certain quasi-contracts, by which guardians and curators obligate themselves to care for wards and minors, both with regard to education, and with regard to the administration of property. And it should be noted that wards and minors cannot obligate

their property (except for fixed property or quasi-fixed property), without the authority of a judge: and if it is movable property, without the consent of the guardian or curator. However, it is doubtful whether, if they obligate themselves, they remain naturally obligated? We affirm this, along with Lessius, Lugubilio, Navar, Sanch, Laym, Castropal, Salmant, and others (against Bonac., etc.), whenever the ward is at least close to poverty, and the contract is not with his own guardian, or curator, but with outsiders; for in L. Novatio, ff. de Novat., we have this expressly stated, when it is said, "provided that the obligation is either valid or naturally binding, as, for example," (note) "if a ward, without the authority of his guardian, promises something." Furthermore, it should be noted that wards and minors cannot make donations, unless those who are in a similar condition can make donations; but donees are not obliged to restore what they have received, unless after a judgment of a judge; for such donations are already valid by natural law (4). 235. — V. Concerning testaments, Moralists also treat this subject more extensively, (1: Lib. 3. n. 911. — (2) N. 912. (3) N. 913 ad 916. — (4) N. 917 et 918.

[*Latin ed. p. 280*]

268 TRACTATE X. ON THE SEVENTH PRECEPT OF THE DECALOGUE. But because these matters pertain more to the forum [court of law] than to conscience, I omit them here, referring the reader to what I have said on this subject in the moral work (1). Here, I shall note only a few things that are helpful for confessors to know. Note 1: When it is clear to the heir what the testator's will was regarding a pious disposition, the heir is bound in conscience to fulfill it, even if there were no external proofs. But if this is not clear, he is not bound to believe a single witness, even if the witness is most trustworthy; for at least there must be two witnesses; this is derived from c. Relatum 1, de test., and c. Licet. de Testib., where it is said: "However, there is no reason that should be concluded with the testimony of one person, even if it is legitimate." And this rule is certain, as Laym says, and is accepted by all commonly (2). 236. — Note 2: A legacy left to virgins is due even to a corrupt woman, if her corruption is hidden, according to common opinion (3). Note 3: A legacy left to virgins born in a certain place should not be given to virgins born there by chance, as Sanch., Trullench., and Barbosa say in Ferraris (4). Note 4: Only the Pope can change pious dispositions, when there is a just cause, as is expressed in Clement. Because it can happen, concerning religious houses, that bishops cannot do this, except when such a cause arises that, if it had been known to the testator, he would have made different arrangements; then they can interpret his will and apply the legacy to another pious purpose (5). 237. — Note 5: Testators are bound in conscience, and indeed under a grave obligation, to bequeath their goods, not only to necessary heirs, such as children and parents, or grandparents, as far as legitimate

heirs are concerned; but also to brothers and sisters, when these are in extreme necessity or great hardship, as is held by Lug., Bon., Sylv., Dian., etc., contrary to Salm. The reason is that in life, we are already bound by a grave obligation to love and help poor brothers, as Laym., Sylv., Aug., and even Salm. teach, because of the bond of blood; and so that if anyone harms his brother, he commits two sins, one against justice, and the other against piety. If, therefore, the obligation of piety binds us in life, why not in death? I said extreme necessity or great hardship, because if the brothers were poor, but not in such extreme need; or if they were related in a more distant degree, although they were in great need, then it is probably not a grave obligation, but at least a light one (6). 238. — Note 6: A father can disinherit his children for a just cause, such as if they had attempted to kill him, or to prevent him from making a will, or if they had inflicted another grave injury upon him; on the other hand, if they had married people of unequal quality. It is very likely that a father can disinherit a daughter who, being under 25 years of age, had lived luxuriously (7). However, this is understood if the daughter (or son) has a means of livelihood; because if she is suffering from poverty, the father is always bound to provide her with the necessary sustenance for life (8).

1) Book 3, see book 5, chapter 4, and note 9tg.

2) Notes 923 and 924.

3) Note 950, doubt 6.

4) In Ferraris, Bibliotheca, volume Civitas, note 71.

5) Book 3, note 93r.

6) Note 946.

7) Note 948.

8) Note 341.

[*Latin ed. p. 281*]

OF HASTY JUDGMENT. 269 TREATISE XI. ON THE EIGHTH PRECEPT OF THE DECALOGUE. CHAPTER I. ON HASTY JUDGMENT, INSOLENCE, AND DETRACTION. PARAGRAPH I. ON HASTY JUDGMENT. 1. Concerning hasty judgments and suspicions. — 2. Matters to be noted in practice. 1. — A HASTY judgment is a mortal sin when we judge our neighbor to have committed some grave evil without sufficient foundation. From this it follows that such judgments are usually excused from being mortal, either because the foundation for the judgment is considered sufficient, or because they are not judgments, but suspicions which, although hasty, do not constitute a mortal sin, unless one suspects that a person, by name, is guilty of very serious crimes, such as atheism, heresy, incest with parents, and the like (1). 2. Therefore, in this matter, the confessor should note that many uneducated people accuse themselves of having made hasty judgments: it is necessary to ensure that they

understand 1. that when sufficient reasons are present for judging a certain action, the judgment is not hasty, but just; and therefore, not blameworthy. 2. That these are usually not judgments, but suspicions which lords and heads of families are sometimes obliged to have, in order to prevent some sin: for example, to prevent servants from becoming violent, or daughters from sinning by associating with men, and other similar things. It should only be noted that such suspicions should not be communicated to others without necessity. PARAGRAPH II. ON INSOLENCE. 3. Concerning insolence, and the restitution of honor. — 4. The cause which excuses. — 6. Concerning the reservation and reading of letters. — 6. To whom this is permitted. 3. — INSOLENCE is also a grave offense, since by it the honor of one's neighbor is gravely injured in his presence. Therefore, if it was public, public restitution of honor must be made to him, by asking for forgiveness, or at least by ensuring that others know that such a restitution of honor has been made (2). And if the insult was inflicted privately, it must also be compensated for privately, according to the true and common opinion of Lessius, Lugat, Sporer, Roncaglia, St. Antoninus, Salmerius against Layman and Molina (3). 4. However, it is excused 1. if it is reasonably presumed that the offended party has already forgiven the offense, or has refused public satisfaction, so that a new shame is not caused, and in this case, it is sufficient to (1) Lib. 5. n. 962 ad 965. — (2) N. 966 et 974 ad 998. — (3) N. 985.

[*Latin ed. p. 282*]

TRACTATE XI. ON THE SEVENTH COMMANDMENT OF THE DECALOGUE, treated in another manner. 2. If the injury has already been avenged; or if the offender has already been publicly punished by a judge with a penalty sufficient to restore the honor that was taken away (1). 5. – Contumely is also inflicted upon a neighbor if his letters are surrendered, or read, unless the consent of the person to whom they are sent, or of the person from whom they are written, is obtained, or at least presumed, as say Lug, Busemb, Escob, Navarr., etc. (2). And he would sin gravely; if the matter were serious, or if he judged that the neighbor would be greatly offended by it. However, in that case, if the matter were truly trivial, the one who reads it would not sin against justice, but against charity, as rightly says La-Croix, with Bonac. (3). 6. – It is permissible to withhold letters from enemies and even from others who write during times of war, from princes. And the same is permissible for public officials, if they judge it necessary for the common good. 2. Religious prelates can open the letters of their subordinates, if there is a statute or custom to that effect, or at least a probable suspicion that something evil is contained therein. But this cannot be understood of those letters which are addressed to superiors, or which have been given by them. 3. It is also permissible for private individuals to open the letters of their adversaries who are causing

them unjust annoyances; thus say Lessius, Lugo, Laym, Sanch, Navarr, Bonac, Salmant, and Ronc. And Lugo and Busemb also permit this, in order to avoid a grave injury that threatens a third party (4). If, however, someone were to gather torn pieces of a letter from the ground, left in a public place (not in a hidden place), and read them out of curiosity, then he would not do any injury to that person (provided he did not reveal a secret to the detriment of that person); for what is considered abandoned is licit to convert to one's own use; thus say Laym, Busemb, Diana, S. Antonin, Sylvest., etc.; and this, although (say Lugo and Ronc), the owner had torn the letter into small pieces; for then it seems that he intended to relinquish his right. But La-Croix contradicts this with Rebellio, etc., because by tearing the letter into small pieces, he clearly intended that it not be read, and did not intend to relinquish his right. And what has been said about letters applies to all other writings; for everyone has the right to privacy in his writings, which he does not wish to share with others; thus say Navarr, Molin, Busemb, etc. (5). POINT III. ON DETRACTION. 7. Detraction is culpable when: 3. Something secret is learned through deceit, etc. – 9. Regarding the obligation of secrecy. – 10. Whether it is permissible to publish a fault for the sake of defense. – 11. Whether it is permissible for the sake of counsel and comfort, and whether it is permissible to a virtuous person. – 12. If the fault is public in one place, etc. – 13. If it has been public at some time, etc. – 14. If the fault is connected. – 15. If it is reported as having been heard from others. – 16. He who names an order, or a monastery. – 17. He who induces, or hears detraction. – 18. Regarding the restitution of reputation. – 19. Causes excusing from restitution. – 20. Whether there is an obligation to compensate for defamation with money. – 21. Whether the defamed person can compensate himself. – 22. What are scandalous writings, and what penalties are there for those who publish them. 7. – DETRACTION against another's reputation is mortal when either a false fault of the neighbor is published, or a true fault, but one that is hidden, and which is not to be made public soon; and also when it is published in order to disgrace him; for (1) Book 3, n. 989 and 990. – (2) Law 5, n. 70 to 71. – (3) Ibid., v. Ita. – (4) Ibid., and law 3, n. 369 to 3, near the end. – (5) Law 5, cited, n. 70, v. 6. If letters.

[*Latin ed. p. 283*]

ON DETRACTION. 271. If it is made manifest for another just end (by speaking of a true fault), for example, to correct a neighbor, or to prevent a serious harm to others, and there is no other means of avoiding it, then it is not illicit to make it known (unless in the case where the damage caused by the defamation would notably exceed the proper damage); because, as St. Thomas says (1), that is called true detraction which is done to denigrate another's reputation, but not that which is done for another necessary good: "If anyone," (so says the Doctor) "uses words by which the reputation of

another is diminished, for some necessary good, it is not a sin, nor can it be called detraction (2)." 8. This raises a significant question: can one reveal the hidden fault of another to avoid a serious harm to oneself, but the fault was known unjustly, or by force, or by fraud, e.g., by opening letters, etc.? There are various opinions; among them, we favor those of Lug. Laym. Tourn. La-Croix and Sporer, who deny that this can be done, because the unjust action obliges the one performing it to restore to the neighbor all the damages that will result from it. One could only reveal another's fault when it would be permissible to investigate it even by force, or by opening another's letters, as if the revelation would benefit the common good, or if the neighbor were under serious pressure to reveal a secret in order to repair the damage, or if the neighbor were exhibiting unjust persecution, and another, by handing over the letters, would reasonably believe that they contained something that was directly the cause of unjust damage to himself, or to an innocent person; otherwise, if the vexation was not directly contained in the letters, but some knowledge could be indirectly deduced from them that could promote one's own benefit, or avoid damage, then it would not be permissible to open the letters, since this is contrary to the common good of society, which must always be preferred to private good; thus, Less. Laym. and Salm. agree with others (3). 9. It is also appropriate here to know when we are obligated to keep a secret? In this, it is necessary to distinguish between a natural secret, a promised secret, and a committed secret: a natural secret is when one happens to know a hidden fact; a promised secret is when one obligates oneself not to reveal something; a committed secret, finally, is when one confides a secret to another with a prohibition of revealing it. Let us consider the obligation of keeping a secret. A promised secret obligates according to the intention of the one making the promise, but he is not obligated to observe it strictly, unless it is certain that he obligated himself in that way. A committed secret (also called a strict secret) obligates more strictly than a natural secret, and can only be revealed in the following cases: 1. if the principal's consent is presumed; 2. if the fact has already been made public. Indeed, Az. Lug. Ronc. Salm. and others say that it is not mortal to communicate a committed secret to one, or another, even if it is about a serious matter, provided that the person is not such that it would be particularly understood that the one who confided the secret wanted it to be kept hidden; 3. if the concealment of the secret would lead to harm to the common good, or to an innocent person, and to the detriment of the one concealing it; because then one can rightly reveal it. Add to this, according to the more common and probable opinion with Soto, Navar. Laym. Less. Lug. Bonac. Ronc., etc., that one can reveal a secret even to repair one's own serious damage, provided that one is not in a worse condition than other innocent people: provided that the revelation does not lead to serious harm to the common good, and provided that one has not obligated oneself to keep it secret even with some damage to oneself.

But can one reveal it in danger (1)?

(1) St. Thomas.

(2) Lib. 3. n. 66g.

(3) Lib. 3. n. 269 circa fin.

(1) s. 2. q. 73. art. 3.

[*Latin ed. p. 284*]

272. TRACTATE XI. ON THE EIGHTH PRECEPT OF THE DECALOGUE. Even in such a perilous situation, having obligated yourself to conceal something, both the affirmative and negative assertions are probable (1). 10.—It should be noted that it is permissible (as Lugo, Cardinal Tournely, and Busembach say) to reveal a certain true fault of a neighbor, to the extent that it is helpful, and it is even necessary to defend oneself from some danger that he has prepared. This is true, because to impute a false fault is always a grave sin, as is stated in proposition 44 from the condemned propositions of Innocent XI, which said: "It is probable that one does not sin mortally who imputes a false crime to another, in order to defend his justice and honor, etc." (2). However, many doctors excuse from mortal sin those who, to avoid greater torments, confess a fault of which they are immune; but we do not admit this with others (3); observe what will be said in treatise 13, number 83. 11.—It should be noted that it is permissible to disclose another's sin to the extent that it contributes to one's own purpose, or to alleviate some grave injury with which one has been afflicted, as is commonly held by Nav. Bon., Sayro, Ledes., Mazzotta, Bus., Salm., and others. And many grave doctors, such as Less., Cajet., P. Nav., Bonac., Covar., Nav. Trull., etc., excuse (at least from a grave sin) one who reveals a certain secret fault to one or another prudent man, because fame consists in the estimation of men, and therefore it is not understood that defamation signifies that sin to one or another who concealed it. And this is also clearly stated by St. Thomas (4), saying: "If someone says to another, by carelessness, what that person has done (namely, another's sin), but in such a way that no infamy results to the deliquent, then he does not sin mortally, although he acts carelessly (5)." 12.—It should be noted that when a fault is public in one place, it is doubtful whether it is a grave fault to manifest it in another place, even if knowledge of it has not yet reached that place, nor will it soon reach it? There are three opinions: the first, with Dicast. Villalob., Antoine, Tournely, Cuniliati, etc., holds that it is a mortal sin against justice, because the deliquent still possesses his reputation in that place. The second, with Less., Sylv., and Bonac., holds that it is a mortal sin against charity, because although the guilty party has lost the right to reputation, he may nevertheless be greatly saddened, knowing that his crime is being made public in a place where it is unknown. The third opinion is more common, and is vigorously defended by Lugo (and he calls it the common and true opinion), with Cajetan, Anton. Ledesma,

and Major, and it is held by the Salmanticenses, with Navarr., Bannez, Serra, Filliuc., Fagund., Macado, and others (6), saying that it is neither a grave fault nor against justice, nor against charity. Several authors offer reasons for this opinion: but the best reason is that it is for the common good to know the malefactors so that others may take precautions against them; and this common good outweighs the deliquent's loss. This reason, in my opinion, is very probable, especially when the crime is such that it makes the guilty party pernicious and to be avoided, such as the crime of theft, adultery, murder, treason, and the like. It is objected that the guilty party, by possessing his reputation in that place, cannot be deprived of it by mere probable opinion; but it is answered that at the same time that the deliquent's sin becomes public, on the one hand he has already probably lost his right to reputation, and on the other hand, everyone acquires the right to know it in order to avoid it; and when the right of the thing is uncertain, the possession of it is also uncertain. I find that P. Concina (7) (1) Lib. 5, n. 970 and 971. (2) N. 972. (3) Lib. 4, n. 275. (4) Quodlib. 11, a 13 ad 3. (5) See Lib. 3, n. 975 in fine and 974. (6) Lugo, dub. 14, n. 59. Salm. tr. 13, de Restit. c. 4, n. 61, with others. (7) Concina, Comp. Theol., vol. 1, p. 239, n. 10.

[*Latin ed. p. 285*]

ON DETRACTION. 273 He distinguishes, and says that when a fault is notorious by the fact itself, that is, when it is publicly committed, it can be made known everywhere; but when it is notorious only by the notoriety of the reputation, he says: "All ought to be cautious, because this public reputation is easily fabricated." Note, however, that a fault published only within one family, or monastery, cannot be called absolutely public; therefore, it cannot be made known elsewhere, nor even in another monastery of the same order, which has frequent communication with it (1). 13. — On the other hand, a fault which is public at one time, cannot be made public in another place where the fact was hidden, without grave guilt, at least against charity; unless the fault was public, not only by the fact itself, but also by the notoriety of the law, namely, by a sentence of a judge, or by a confession of the fact in court, as Lessius, Lugo, La Croix, etc., teach (2). Nevertheless, despite this, it is not forbidden for historians to describe public faults even from the fact itself, as Sotus, Molina, Vasquez, etc., say (3). 14. — Note 4: If someone is notorious for one fault, it is not a grave sin to defame him for another fault connected to it, or similar to it, such as saying of a soldier that he is a fornicator, and the like. On the other hand, if a different sin is made public; or if it is made known twice that the person said to be an adulterer has fallen (4). 15. — Note 5: It is only a venial sin for one to report the sin of a neighbor, but as narrated by enemies, or by others of little faith; or if it is reasonably believed that the listeners will not give credence to what is said. But he will sin mortally if

he says that he heard it from trustworthy people, or if he reports a very grave fault; because in this case, there will be a grave sin, even if it is based only on suspicion (5). 16. — Note 6: It is sinful to defame the reputation of a religious order, or of a monastery of a certain religion; but also to publish the fault of someone of a religion, by naming the monastery or order. Nevertheless, if the order is large, the Reverend Concina rightly says that it is not to be considered a grave sin, nor is the seal to be broken, to name an order which is not of strict observance (6). 17. — Note 7: It is gravely sinful to induce another to defame. He who does not induce, but rejoices at the defamation committed by others, also sins gravely, but only against charity. But he who rejoices not at the harm that the neighbor suffers in that defamation, but only at the novelty or curiosity that the defamation contains, many doctors excuse from grave sin, provided that he is not a superior; because it is gravely important for a superior to correct a subordinate who is defaming. Therefore, superiors sin gravely against charity (but not against justice), as rightly held by Lugo, Sotus, Reb. Dicast., etc., if they fail to correct subordinates who are defaming a neighbor about a serious matter (7). But he who is not a superior is excused by many grave doctors from mortal sin, if, out of modesty, or fear, he does not strive to prevent defamation, provided that no other harm is caused to the neighbor (beyond the defamation itself) by the defamation, and provided that, as St. Thomas says (8), he certainly does not know that if he were to intervene, he would prevent the defamation; but (1) Lib. 5. no. 974. — (2) Ibid. v. Similiter. — (3) See Salm. de Restit. e. 4. n. 57. — (4) Lib. 3. n. 976. — (5) N. 977. — (6) N. 978 ad 16; and l. 6. n. 655 in fine. — (7) N. 979 et 930. — (8) 2. 2. q. 75. a. 4.

[*Latin ed. p. 286*]

274. TRACTATE XI. ON THE EIGHT PRECEPTS OF THE DECREE ON DETRACTION. It is morally impossible for one who is not a superior, or at least one who does not greatly surpass in dignity or nobility, to possess this certainty (1). Lugo, Busemb., etc., note that those who err are those who, upon hearing someone speak against another, immediately assume that the person should be corrected; for it often benefits the person more to allow the detraction to continue, so that, at some point, it may be discovered that the matter is not as it was initially perceived. Furthermore, in order to free himself from all scruples, when he hears someone detracting, and indeed about a serious and hidden matter, it will be sufficient if he withdraws from the circle; or if he tries to change the subject, or if he shows that he disapproves, by turning his face away, lowering his eyes, or showing a very serious expression (2).

18. — Note that an unjust detractor is bound to make amends for the damage to reputation caused, and even for the damage itself (provided it is at least vaguely known); and not only when the false accusation is

confessed by singing a palinode before those who heard it, both directly and indirectly (since those who hear it directly are negligent if they fail to point out the error to those around them); but even when the statement is true, it is beneficial to consider the best way to express it, saying, for example: "I was mistaken, I was deceived, I was misled, I lied"; for every sin is deceit and falsehood, according to St. John. I often give this advice so that they may say: "This came from my head," (commonly "me Pho cavato dal capo"), using a double meaning, because all words proceed from the mind (for which the head is taken as a symbol). However, if it were ever judged that restoring the reputation would likely cause greater damage than benefit, because it is presumed that the matter has already faded from people's memory (as is presumed when the defamation occurred a long time ago, and is now completely forgotten), then it is better to seize opportunities to praise the person in some virtue, so that, by placing them in good repute with others, the past defamation may be brought to mind in connection with this restoration of reputation. However, the confessor must take care that such restorations of reputation are made before absolution, whenever it can be done conveniently, because it will be difficult to accomplish them afterward; although, otherwise, they are less difficult than the restitution of money (3).

19. — Finally, it should be noted that a detractor may be excused from making amends for the damage to reputation for several reasons: 1. if the offense has already become public through another means, or if the person who was defamed has benefited in other ways from the defamation; 2. if it is prudently presumed that the person who was defamed has forgiven the offense, since everyone is the master of their own reputation, as Laym., Nav. Trull. Bus. Holz., etc., say in common (4); provided, of course, that it is understood that forgiveness has been granted; but forgiveness cannot be presumed when the defamation would lead to scandal, or to common harm, or to harm to others; 3. if making amends would involve a risk to life, or damage that is much greater than the defamation itself; 4. if it is judged that the detractor is not trustworthy, as when the defamation is made in the heat of anger; 5. if it is prudently judged that the offense has been forgotten, as mentioned above; 6. if the person who was defamed has also detracted against you, and has not yet made amends, then, according to the more common and probable opinion of Soto, Silvius, Wigant, Tourn., Laym., Salm., etc., you may suspend your own restitution until the other party fulfills their obligation (5).

20. — It is doubtful 1. whether, when the restoration of reputation cannot be accomplished (1) Lib. 3. n. 981. — (2) N. 979. — (3) N. 992. — (4) N. 1903. — (5) N. 989 et 989.

[*Latin ed. p. 287*]

ON THE OBLIGATION OF FASTING. 275. Should the detractor be

compensated with money? Some, such as Silv. Sot., etc., along with St. Thomas (1), probably affirm this, because reputation is also an estimable asset. However, the more common and probable opinion, held by Lessius, Lugo, Sanch., Laym., Vasquez, Bonaventure, Salm., Croix, etc., denies this, because justice obligates only to restore what has been taken away, or its equivalent; but reputation, being of a different nature, since it is superior to material goods, can never be compensated for at any price. Therefore, restitution made through money will never be a suitable satisfaction, because the one who has been defamed will always remain in the same condition as if the creditor had not received the payment (2). Note that this was stated in treatise 10, number 33, paragraph 21. — Question 2: If the detractor is unable, or unwilling, to restore the reputation, can the one who has been defamed compensate himself with money from the detractor? Some doctors deny this, because compensation cannot be made with only a probable opinion. However, others, such as Lessius, Moliner, Aragona, Ledesma, etc., affirm this; and Salm. admits this opinion as practically probable, saying that the rule cannot be that one can be compensated with a probable [claim], when the debt is doubtful, but rather when it is certain. But it is not certain that the one who has been offended has a claim regarding his reputation, and the doubt only concerns the manner of compensation, and these doctors probably admit this manner (3). Nevertheless, I adhere to the first opinion, because the one who has been defamed is a creditor in the matter of reputation, not of material goods; and if it is probable, indeed more probable (as we recently saw), that the detractor is not obligated to compensate with money, because he cannot repair the reputation, it always happens that the one who has been defamed is compensated only for a probable debt, not a certain one (4). 22. Something must be added here regarding infamous libels. An infamous libel, or defamatory libel, is when a serious and hidden defamation of someone is published in writing. It is also called a libel, a written accusation presented to a judge without the name of the accuser. Against those who prepare these libels, there is a sentence of excommunication, as is stated in c. Qui alterius, 5, question 11; but it is latae [excommunication], if the libel is against the Pope, or Cardinals; indeed, it is reserved [to the Holy See], if it is against the Franciscan or Dominican orders, or another order in communion; but not if it is against a particular religious [person]. Those who affix an infamous sign to the door of someone incur the same guilt and penalty (5).

TREATISE TWELVE. ON THE PRECEPTS OF THE CHURCH. 1. The precepts of the Church are many, but the principal and most common for the Christian people are five: 1. To assist at Mass on Sundays and holy days by order (but this has already been sufficiently discussed in the third precept of the Decalogue); 2. To fast during Lent, the Vigils, and the four seasons; 3. To abstain from meat on Saturdays and Sundays; 4. To confess at

least once a year, and to receive Holy Communion during Easter; 5. Not to celebrate marriages during prohibited times, and this will be discussed in the treatise on Marriage. Therefore, it remains here to discuss (1) 2, number q. 6, number 2, ad 2. — (2) Book 3, number 627 and 1000. — (3) Number 1001. — (4) See book 1, number 35, vide Hino — (5) Book 3, number 995.

[*Latin ed. p. 288*]

TRACTATE XII. ON ECCLESIASTICAL PRECEPTS, concerning the 2nd, 3rd, and 4th precepts. The first chapter will contain a discourse on fasting, and here also will be discussed abstinence from meats; the second chapter, on annual confession and Communion.

CHAPTER I. ON ECCLESIASTICAL FASTING.

POINT I. ON THE OBLIGATION OF FASTING.

2. On abstinence from meats.

3 and 4. On dairy products.

5. On delicacies.

6. On three bulls of Benedict XIV.

7. Whether those who are dispensed from eating meat may eat fish.

8. On pork.

9. On a single meal.

10. On interrupting a meal.

11. On sweets, etc.

12. On beverages.

13. On wine and beer.

14. On sorbet.

15. On chocolate.

16 to 19. On a late collation.

20. If someone eats meat or other food multiple times, etc.

21. On the hour of refreshment.

2. There are three conditions required by ecclesiastical fast: abstinence from meats, a single meal, and the hour of refreshment. Fasting principally consists in abstinence from the meats of those animals which are born on land and breathe, according to the rule of St. Thomas (1); or, commonly, among meats, and not among fish, according to the common opinion of others. However, when there is doubt as to whether the consumption of the meat of any animal is permitted or forbidden during a fast, and there is no legitimate custom, Benedict XIV (2) says that it must be determined, according to the rule of the Angelic Doctor, "whether such an animal is

similar or dissimilar to those whose consumption is forbidden on days of fasting, and whether its meat is more suitable for nourishing and strengthening the human body," as Tamburinus widely demonstrates, in "De Divinis Afflictionibus," book 4, chapter 5, section 1, number 10, and also in "Ad 4. Praecepta Ecclesiastica," chapter 3, number 2. And if it is not possible to define anything certain, the same Benedict adds that the matter should be referred to the judgment of the Apostolic See. Therefore, Bonac. Regin. Concina, Tamb. Holzm., Elbel, etc., say that turtles, frogs, snails (commonly called "maruzze"), locusts (commonly called "grilli"), and shellfish are not forbidden. Holzm. and Elbel also say this about otters (commonly called "lutrie"), beavers, and certain types of ducks. On the other hand, birds are forbidden, although some of them are fed in water; nevertheless, all are considered true meats, such as ravens, seagulls, and the like (3). The insane and children before the use of reason are exempt from this precept. Whether children who have attained the perfect use of reason before the age of seven are exempt, see what was said in treatise 2, number 37.

3. During Lent, adults are forbidden, under a serious penalty, not only meat, but also eggs and dairy products, as stated in Proposition 32, promulgated by Alexander VII, which said: "It is not evident that the custom of not eating eggs and dairy products during Lent is obligatory." The following is questioned: 1. Whether dairy products are universally forbidden during Vigils and the four seasons outside of Lent? Some (but few) affirm this from canon "Denique 6," in "Distinction 4," where St. Gregory wrote: "It is fitting that we fast from flesh and eggs." And St. Thomas (4) seems to be of this opinion, saying that the Church forbids the faithful both meat and eggs. But we say, with the common opinion, that dairy products are not forbidden during Vigils, unless a custom of abstinence has arisen: so say Navar., S. Anton., Laym., Sanch. (1), 2nd part, question 147, answer 8.

(2) On the Synod, book 1, chapter 11, number 5, number 12.

(3) Book 5, numbers 101 and 102.

(4) 2nd part, question 147, answer 8.

[*Latin ed. p. 289*]

OF THE OBLIGATION OF FASTING. 277. Concina and others, citing St. Augustine, argue that the Council of Toledo also holds this view. This canon does not contradict this. Indeed, because St. Gregory was questioned about the Lenten fast itself, and a fitting response was given to the inquiry; and St. Thomas speaks of the same Lenten fast, saying in chapter 8, question 3, "And therefore, in every fast, the eating of meat is forbidden; but in the Lenten fast, even eggs are forbidden." Therefore, outside of Lent, eggs are not, by right, forbidden. Nor does the passage in the bull *In suprema*, by N. SS. Pope Benedict XIV, contradict this: "In Lent and on other days when the eating of meat and dairy products is forbidden, it may happen that a dispensation is granted, etc." For, as a certain modern author has

probably written (Father de Petio, Theatine, in the addition to Fel. Pot.), these words do not condemn the contrary opinion, since they can be understood as relating only to the Lenten period, and not to others; but the entire matter is resolved by other words of the Pope from the Synod (1), where the Pope says: "In other fasts, outside of Lent, eggs and dairy products should not be forbidden by the bishop in those places where their use has long been established by legitimate custom." If the bishops are told that they should not forbid them, it is evident that, in fact, they have not forbidden them, nor have they declared them to be forbidden, at least where there is a custom of eating them (2).

4. It is asked: 2. If there is a custom of abstaining from dairy products, are the inhabitants obligated to abstain from them under a serious penance? Sanch., Villalob., Tambur., etc., deny this, because it is not certain (as they say) whether it was introduced with the intention of obliging under a serious penance, as would be necessary. But the common opinion, which we follow with Lessius, Layman, the Council of Trent, Salmeron, Bona, Viva, and others, with St. Thomas (3), affirms this; because, as we said in treatise 2, number 79, at the end, when such an abstinence is a heavy burden, and when it appears to be constantly observed, it is well presumed to have been introduced and continued with the intention of obliging; otherwise, it would easily cease; and, given that the presumption stands for an obligation, the possession stands for that obligation, and not for liberty (4). And we will say the same for the same reason regarding the obligation of nuns to observe the canonical hours. See in appendix 3, on the examination of orders, number 61, at the end of volume 3.

5. It is asked: 3. To those to whom dairy products are permitted, is lard permitted? Sylvest., Ostiensis, Abb., etc., affirm this; and Father Viva calls it probable, citing Layman and Azor (but I find Layman to be entirely opposed to this, and Azor does not condemn it, but only questions it). Tamburinus, with Diana and Henriq., admits it only when it is liquefied; but I judge that the first, common opinion of Sanch., Bona, the Council of Trent, Roncaglia, Elbel, Milante, and others, who entirely deny it, should be followed, because lard is true meat (5).

6. It is asked: 4. Can those who are dispensed from meat, or from dairy products, eat fish on days of fasting? But here, first of all, those things that have been sanctioned and declared by the Most Holy Pope Benedict XIV, concerning fasting, in his three bulls, must be noted. And 1. in the bull *Non ambigimus*, dated March 30, 1741, it was declared that no one can be dispensed from meat without a legitimate cause and the advice of both physicians, namely, the physician and the priest, or the confessor; and it was further declared that a dispensation cannot be granted to the entire population, or (1) Book 2, chapter 5, number 15. — (2) Book 3, number 1009. — (3) *Cited*, question 147, number 8, to 3. — (4) Book 3, number

1099, Dub. III. — (5) Number 4010.

[*Latin ed. p. 290*]

278 TRACTATE XII. ON THE PRECEPTS OF THE CHURCH. It is required that, in matters of community, there be a most grave and urgent necessity, and that dispensation be obtained from the Apostolic See as often as it is needed; and those who have been thus dispensed must adhere to a single meal, and it must not be the case that lawful and forbidden foods, namely meats and fish, are mixed together, as was declared in the rescript addressed to the Bishop of Santiago de Compostela, which is cited in the bull *Libentissime*; 2. in the bull *In Suprema* of the same Pope; and on August 22nd, it was declared by the same two precepts that anyone who had been dispensed should observe them, not only during Lent, but also on all other days of fasting; 3. in the bull *Libentissime*, dated June 10, 1745, it was declared that those who had been dispensed to eat meat should use that food, and that portion thereof, with which those of scrupulous conscience who are fasting use; 4. they themselves must observe the norm prescribed for those who are fasting; 5. for those who have been dispensed to eat meat, the forbidden foods are fish (even on Sundays of Lent); so that meat and fish cannot be placed together on the same table: the forbidden foods (these are the words of the bull) are fish; and therefore, both cannot be used together; it is added there that fish are permitted to those who have been dispensed to eat dairy products. 7. – With these points established, a certain person questioned whether it is permissible for those who have been dispensed to eat meat to eat any fish in a private meal? On this matter, the aforementioned Father Petio wrote that an injunction had been made only for banquets, in order to avoid scandal, but not for those in a private meal who might wish to eat a small amount of fish, without causing scandal; and not out of gluttony. But even if these limitations are placed, it is entirely improbable (to say nothing of erroneous) that such an opinion is held, since 1. the bull speaks generally; 2. the Pope, in the aforementioned bull, mentions banquets only in order to show that the license to indulge in gluttony had gone so far that even forbidden foods were permitted at banquets, which certainly indicates a greater recklessness. 3. Setting aside subtleties and empty arguments, it is clearly evident, from what is established in subsequent bulls, that Petio is far astray. For in the bull *In Suprema* it is stated: "We declare and decree that those to whom dispensation has been granted... shall, without exception, not at all combine a single meal with lawful and forbidden foods." Therefore, just as it is not permitted for anyone, whether in private or at a banquet, to use more than one meal, so neither are forbidden foods (such as fish), since both are obligatory for all, without exception; otherwise, those who eat fish privately, and not at a banquet, would have to be excepted. 4. When asked what foods are forbidden to a spouse who is permitted to eat meat,

the Pope replied that the lawful foods for those to whom it is permitted to eat meat are meat itself; the forbidden foods are fish, and therefore, both cannot be used together: therefore, fish are forbidden to those to whom meat is absolutely permitted, such as those who eat meat even privately. 5. The Pope declares in the same place that fish are not forbidden to those who have been dispensed to eat dairy products; therefore, they are forbidden to those who have been dispensed to eat meat. What could be clearer? 8. – It is asked whether, for those who have been dispensed to eat meat, the eating of pork is forbidden during times of fasting. Father Concina affirms this absolutely, based on a certain decree issued by Clement XI in Rome on February 24, 1702. But Lugo, Sanch., Croiæ, Tamb., Salm., and Villalob., among others, generally deny it, because it would be too scrupulous (as they say), and would cause more concern.

[*Latin ed. p. 291*]

ON THE OBLIGATION OF FASTING. 279 Furthermore, those who are dispensed from fasting should examine whether certain meats are harmful to them, while others are not. Nor does the aforementioned edict of Clement (not a decree) present an obstacle, where two precepts were established: one that those dispensed should be permitted only one meal, and the other that they should not be allowed unhealthy meats. I say it does not present an obstacle, because that edict was not general, but particular to the condition of Rome, as attested by Viva and others, and as declared by the same Benedict XIV, when he was the Archbishop of Bologna, in Notific. vol. 1, no. 24. And later, in the bull *Non ambigimus*, when he recalled the praised edict, although he made the precept of one meal universal, he nevertheless passed over in silence the precept concerning abstaining from unhealthy meats; hence, it is argued that the Pope did not intend this precept to be made universal. But speaking specifically about pork, it does not seem to me that it can be absolutely said to be harmful, since, as the celebrated doctor Hoffmann writes, it has the greatest similarity to human blood. But someone might say: Why was this meat forbidden to the Hebrews? Was it not because it was harmful? But the answer is that in Palestine (a very hot region), it could be prohibited because there, pigs (according to Calmet in Leviticus 11:8) are more easily infected with leprosy, which does not happen in other parts. Likewise, the meat of the hare was forbidden, but in those regions, hares are certainly not considered harmful. Furthermore, St. Thomas (1) says that the meats forbidden to the Jews were some because of excessive moisture, or dryness, and others because of impurity, such as pork; and indeed, the reason given by Moses for such a prohibition is that those meats were unclean for the Hebrews: "You shall not eat of their flesh, because they are unclean to you," Leviticus 11:8. They are called unclean because, as Plutarch writes, "no animal delights in filth and foul places more than this one." Moreover, Natalis de Alexandro, and

previously Tertullian (Book 2, Against Marcion, chapter 18), wrote that pork was forbidden to the Jews to restrain gluttony and incontinence. 9. — The second condition of fasting is the single meal. It was previously debated whether those dispensed from fasting were subject to this condition, since if abstinence from meat ceased, did not the essence of fasting also cease? But today (as we have said), we know from Benedict XIV that fasting contains two precepts, so that although the first, concerning abstinence from meat, may cease, the second (although less important) concerning the single meal does not cease; however, an exception is made in the case where a dispensation for meat is granted due to infirmity or weakness of the body, as the doctors commonly say; and as the same Pope declared in the bull *In suprema*, where it is said: "Provided that no certain and dangerous condition of health intervenes, or otherwise it is necessarily required" (2). The third condition is the hour of refreshment, which is around midday. The question arises whether one sins grievously by anticipating that hour without cause? Some understand "grievously" to mean more than an hour, but others consider it more likely to mean only an hour. However, it is permissible for the infirm to anticipate the hour. Whether such anticipation is mortal, Azorius, Sanch. Conc. affirm, but Less. Tolet. Pal. Laym. Roncag. Holzm. and Salm. with many others commonly deny; because the hour is not of the essence of fasting, but only an accidental circumstance, which, although it formerly imposed a serious obligation, today, as Holzm. (1) 1. 2. q. 102. art. 6. ad 1. — (2) Lib. 3. n. 1015. v. Quer. lib. circa med.

[*Latin ed. p. 292*]

280. TRACTATE XII. CONCERNING THE PRECEPTS OF THE CHURCH. And Ronc, after the hour of dinner has been changed according to custom, this designation of time does not seem to be imposed as if it were a matter of substance concerning fasting (1). 10. Nevertheless, it is permitted to 1. interrupt dinner for some business that arises. Otherwise, it is not permitted to interrupt dinner and return to the table; but this is understood morally; for even if someone were to end dinner, they can eat again if the other diners continue to eat, or if other dishes are brought to the table that were not expected; thus say Sanch., Salm., and Villalob. Indeed, Filiuc., Tamb., and Elbel concede that another food may generally be taken after an hour and a half. It is certain that dinner should not be interrupted for an hour without cause; but if someone is interrupted by some business, they may certainly interrupt it for an hour; indeed, Lezana, Diana, Fagn., Tamb., etc., concede up to two hours; but Holzm. rightly says that it is permissible if one has not been sufficiently refreshed by food, and cannot endure the fast without serious discomfort, then one may resume dinner, because the Church does not intend to obligate anyone to spend the day without sufficient refreshment (2). However, Croix, Fagund., and Tamb. say that it is permissible to prolong dinner up to two hours; and Elbel, with

Gob., admit up to three or four hours, at least for Germans, considering their custom (3). 11. It is permitted to 2. take something for medicinal reasons, such as electuaries (which are certain preserves made from sugar and juniper berries, or cedar, etc.), of which St. Thomas speaks (4), and he says: "Electuaries are taken for digestion, and therefore they do not break the fast," unless perhaps someone takes electuaries in large quantities fraudulently "as a kind of food." Therefore, it is permissible to take these electuaries for any just reason, namely, to carry food, to strengthen the stomach, to preserve the voice, to remove bad breath, and the like. Thus, it is also permitted to take a small amount of food (e.g., an ounce) to dispel weakness, as commonly held by Azor., Less., Tol., Laym., etc. Some permit this as often as it is necessary to drink, so that the drink does not harm; but this, as others rightly say, can scarcely be permitted once and again in a day (5). 12. It is permitted to 3. take all drinks that are taken as drinks, such as Caffe, The, Salvia, etc., but not milk or juice; because although these drinks are sipped, they are not considered food, but rather a drink, and more for nourishment than for carrying food. The same is said of fruit juice, or apple juice, commonly called "melloni d'acqua" (contrary to what some modern anonymous writer improbably wrote), and also of grapes crushed with the teeth, or pressed at that time (6). 13. I said grapes pressed at that time, not Vinnum, because although the ancients also abstained from Vinnum, today Vinnum is not prohibited, although it may be drunk to appease hunger, as commonly held by Azor., Sanchez, Less., Navar., Laym., Bonac., with Salm., who call this opinion certain because of the present custom. And even St. Gregory at that time in the cited chapter, Dist. 4, permitted Vinnum without any exception: "Vinnum" is also permitted to be drunk, so that we may completely avoid drunkenness. And the same is said of cervisia, or beer (which is made from barley water and other ingredients), which is also considered a true drink (7). (1) Lib. 3, n. 2016. (2) N. 1920, Quær. III and IV. (3) Ibid., Quær. V. (4) 2. 2, q. 147, a. 6 ad 5. (5) Lib. 9, n. 2018 and 2019. (6) N. 1921. (7) N. 1923.

[*Latin ed. p. 293*]

ON THE OBLIGATION OF FASTING. 281 14. — We say the same regarding water mixed with sugar, and with the juice of cinnamon or citron, commonly called "sorbetto" or "limonata," as taught by common opinion, along with Wigandt, Concina, Elbel, Salm, Viva, Croix, etc., because (as they say) a small quantity of these things is always mixed with a large quantity of water, and is therefore considered a natural drink. Nor should it be thought that freezing changes its nature, because a change of nature implies a loss of essence; but water frozen and placed in the mouth immediately melts and returns to its previous state. And we also have from the rubric of the Mass (chapter 10, number 11), approved by St. Pius V, that if the species of wine are frozen after consecration during the celebration

of Mass, they should not be re-consecrated (which, of course, would be necessary if freezing changed the nature of the species), but should be melted with fire, and then taken (1). 15. — A great question exists among doctors as to whether chocolate breaks the fast. Many deny it, including Cardinal Brancati, Escobar, Hurtadt, Holzmüller, Viva, etc., provided that the quantity of water is greater; they say that this is the reason for considering it a drink, and therefore they say that it can be taken as often as one wishes during the day. Others, such as Sanchez, Sylvester, Laym, Roncaglia, and Tamburini, affirm that it is only a drink that serves as a vehicle for nourishment, but not a drink that is itself nourishment, as is milk and juice, and this is also true of chocolate; therefore, they conclude that the fast is broken unless it is taken in a small quantity. As for my own opinion, I say that chocolate is not approved as a drink, because it truly nourishes, and does not seem to be a simple drink. Nevertheless, I say that it is permissible to take it for two reasons: first, because if chocolate does not have the nature of medicine, and as St. Thomas says, electuaries can be taken even though they nourish, so too can chocolate, and in this, Concina agrees. The second reason is more universal, because today this drink is in common use among all, as testified by Salm, Viva, Holzmüller, Tamburini, and Roncaglia, who, given this established custom, hold that it can be licitly taken. But, whether for reasons of medicine or custom, I think that, along with Salamanca and Milante, it should not be permitted more than once a day. But now there is a great variety of opinions regarding the quantity in which it can be taken without breaking the fast. Concina says that it can be admitted for medicinal reasons; but only by putting a small amount of powder in water, which is certainly too strict, and has not yet been asserted by anyone. Others, such as Salm, with Leone and Turriano, allow up to two ounces. But, to present my opinion in the middle, it seems to me that, along with the Bishop of Milan, it is reasonable to allow a quantity of one and a half ounces, with the amount of water that a usual vessel can hold, because this is the quantity that is commonly in use. 16. — A light meal is permitted in the evening, according to the custom that is now prevalent in places tolerated by prelates: for St. Thomas (2), when discussing fasting, says: "From the very fact that prelates overlook it, it seems they are acquiescing." And in this, it is certainly more appropriate to follow the authority of modern authors, even if they are fewer in number, than the ancient ones, who could attest to nothing about modern customs. There is no doubt that fasting was observed more strictly in ancient times, but according to modern discipline, a light evening meal is admitted by all. In this, it must be considered what the custom allows, both in terms of quantity and quality. (1) Book 3, chapter 1022, Question 2. (2) 2-2, question

147, article 4, ad 3.

[*Latin ed. p. 294*]

282. TREATISE XII. ON CHURCH LAW. Concerning the quantity [of food], while some permit only three ounces, others allow a fourth of the usual meal; but this rule does not seem to me to be sound, because it may be too lenient (at least for some), or at least it is too obscure and causes scruples. Therefore, it is better to follow the opinion commonly held today by others, as testified by Castrop, Roncagl, Salamanca, Viva, Bonac, Holzm, Tamb, Elbel, Dian, Sporer, Milante, Croix, Felix Pot, Mazzotta, etc., which allows, without exception (even for those who need only a small amount of food, as is commonly said), a quantity of eight ounces, and for those who require more nourishment, another two ounces (which is a small amount, as will be explained in number 21). On the eve of the Nativity, a larger amount is commonly permitted, namely 16 ounces, due to the solemnity of the occasion, even if this eve falls on a Saturday of the fourth week; however, it is not permitted on the holy Saturday, nor on the eve of Pentecost. Some, as Salamanca states, permit eating to satiety on the eve of the Nativity, claiming that this is the custom; but I greatly doubt this in our regions; all the more so because Fathers Mazzotta, Pasqual, and Renzi entirely deny it. If someone were to anticipate a small meal in the morning on that same eve, in order to have supper in the evening, Sanchez reasonably states (contrary to what others think) that it cannot exceed eight ounces, because the feast has not yet begun, which begins in the evening (2). 17. Concerning the quality of the food, it is certain that fruits, bread, herbs, and sweets are permitted; but the question arises: 1. Are fish permitted? Many authors, such as Sporer, Marchant, Pasqual, Elbel, Tamb, Vivald, and Burghaber, state that, according to current custom, fish, even fresh and large ones, may be eaten in the evening, just as they may be eaten in the morning. Furthermore, it is customary in these parts to eat small, fresh fish, and, as Viva and Mazzotta say with Bonac, it is also permissible to eat a small amount of a larger fish (e.g., two or three ounces). Milante (3) confirms this, stating that, at that time, even religious communities served small, fresh fish in the evening during Lent; and with regard to larger fish, he writes: "Considering the present discipline, I believe that even large fish can be permitted without any scruple, with due moderation (4)." 18. The question arises: 2. Is it permissible to eat 8 ounces of bread cooked in water with oil? Some admit it; but this opinion is rightly and justly refuted by Salamanca, Viva, Roncagl, Tambur, and others, because bread, through cooking and fermentation in water, acquires a certain different nature; for it becomes so united with the water that it can never afterwards be separated; at least, this is not permitted by custom. Therefore, it is scarcely permissible, as Tamb states, to soak bread in wine or water, and then to eat it, because fermentation does not occur; or, as Roncagl states, 4 ounces of dry bread

cooked in water may be permitted; or, as Salamanca states, up to 5 ounces may be permitted. The same applies to legumes cooked in water. It is probable that Castrop, Laym, Bonac, Azor, Viva, Mazz, and Salamanca permit eating a stew cooked with oil, or vinegar, or wine; but Viva notes that oil, vinegar, and wine must be included in the weight of 8 ounces, since these are not considered drinks (5). (1) Lib. 3, n. 1085. (2) Lib. 5, On Vigils. (3) In prop. Alex. VII, Easter, 23. (4) Lib. 2, n. 1020 and 1028. (5) Lib. 3, n. 1029.

[*Latin ed. p. 295*]

ON THE OBLIGATION OF FASTING. 283 19.—Regarding those to whom dispensation had been granted, and who had inquired whether they might consume meat in the refectory, our Pope Benedict XIV responded (as is read in the bull *Libentissime*) as follows: "It is not permitted, but it is necessary to use that food," and to use it "in portions which are used by those who are fasting with a conscience that is upright and meticulous." After this response, many doctors said that those with dispensation could consume a small amount of cheese or dairy products in the refectory, provided that the amount did not exceed one ounce or one and a half ounces, and this seemed probable according to the practice observed among many; but later, when letters had been given from the Sacred Penitentiary regarding this matter, and when the Pope himself had been asked about his opinion, he declared, through the Sacred Penitentiary, that even cheese was forbidden; and I present here that declaration: "The Sacred Penitentiary... fully aware of the mind of its Holiness, in response to the authority of the same, declared that meat or dairy products are not permitted in the late refectory." Rome, in the Sacred Penitentiary, on February 10, 1756. And since some still doubted the reliability of this response, a letter was written to the Pope by the same official, and this response was received: "The Sacred Penitentiary," by order of the Most Holy Lord, who deigned to read the letter written to him, "declares that Holiness has said... that what was written by the same Penitentiary is true, and should be considered as such." Rome, on July 23, 1756; and these original responses are preserved with me. Some later said that the aforementioned declaration needed to be promulgated in order to be binding; but, as we said in section 2, paragraphs 73 and 74, when a declaration is made by the legislator himself, who declares his mind, it does not require promulgation (1). And Salm., in the Appendix to section 6, page 98, paragraph 27, referring to the aforementioned bull, draws several conclusions, among which is this: "It is inferred (these are the words of Salm.) that neither eggs nor dairy products are suitable for a late collation for those who have been granted dispensation." And he gives this reason: "Because those foods are not consumed by those who are fasting strictly in such a collation." Now, for further confirmation, it is known that our reigning Pope, Clement XIII, recently issued a bull

beginning with the words *Appetente*, etc., dated December 26, 1759, in which the Pope, having learned of the abuse of some people taking certain drinks mixed with milk outside of meals, condemned this practice and declared that his predecessor, Pope Benedict XIV, had considered it not permissible for those with dispensation to consume either meat or dairy products, except in a single meal, and that otherwise they should be treated the same as those who have no dispensation. These are the words of the bull: "New offenses against the laws of fasting, or comments that distort, or customs that are abhorrent to the true nature of fasting, have recently been introduced by the wickedness of human ingenuity, and all of these things must be eradicated as much as possible, with the help of God. Among these, we certainly consider the abuse to be that which has been reported to us; for some, to whom dispensation has been granted for just and legitimate reasons from abstaining from meat, believe that they can consume drinks mixed with milk, contrary to what our predecessor considered, who considered that those who are dispensed from abstaining from meat, as well as those who are fasting in any way, should be treated the same, except for a single meal (1).

[*Latin ed. p. 296*]

284 TRACTATE XII. ON ECCLESIASTICAL PRECEPTS. These [foods] must be equated with those for which no dispensation is granted, and therefore, only a single meal of meat, or anything derived from meat, may be consumed. What originates from meat is specified by canon law, Dist. 4, where it is stated: "That which originates from meat, such as eggs and dairy products." Therefore, it must be concluded that in a collation, only food that is not permitted to those under dispensation should be allowed.

20. If someone breaks their fast, they must inform their confessor how they violated it, whether by eating multiple times or by consuming meat; for every time one eats meat or dairy products, they sin. But if they ate common foods, but in a notable quantity, they would not be held to the fast; this is the common opinion of Azor, Cajetan, Suarez, Tollet, Castrop, Sanchez, Laym, Anacleto, Roncaglia, Holzmann, and Salamanca, among others, against a few. For the essence of the precept of abstinence from meat consists in abstinence; therefore, the obligation to abstain always remains. But the essence of the precept of not eating multiple times consists in a single meal, as taught by St. Thomas (1): "By the Church's decree, it is established that for those who are fasting, one meal may be eaten in a day." Therefore, if the essence of the precept is destroyed by a second meal, the precept is dissolved, and it can no longer be observed (2). The question arises whether someone who eats twice in a notable quantity is obligated to abstain from all other food for the rest of the day? Laym, Bonacich, Castrop, and Holzmann, among others, deny this, for the same reason; but it seems to me more probable, as Azor, Valentia, and Navarret say, that the

opposite is true. For although someone who breaks their fast inadvertently materially breaks it, nevertheless, if they become aware of the obligation afterward, they seem to be bound to observe it, so that they do not formally violate it (3). It is said that the quantity must be notable, namely, more than two ounces, which is considered a small amount, as stated by Sanchez, Vives, Salamanca, Vivaldi, Turrian, Leone, Tamburini, Leandri, Sporer, Busembach, and Elbel, among others. But if someone consumed several small things during the day, which amounted to a large quantity, they would sin gravely, as stated in proposition 29, from the condemnations of Alexander VII. It should also be noted that even a small amount of meat can be considered insufficient, but this is even more limited: Salamanca, Diana Veteranorum, and Roncaglia state that a quantity exceeding one-eighth of an ounce is a significant amount (4). Salamanca and Diana allow two small pastries made from eggs and butter (commonly called "Ciambelle") to be consumed, but Ledesma and Villalonga say that only the reason of the small quantity of the material can excuse it (5).

21. The third condition of fasting is the hour of refection. This hour was formerly after sunset. Later, it was moved to the hour of None. But since the 14th century, it has been advanced to the hour of Sext, namely, at noon. It has been debated whether this advance in the hour of refection constitutes a grave sin? The first opinion, held by Azor, Sylvius, Sanchez, Natalis Alexander, Antoine, Françoja, Cuniliati, and Navarret, among others, as cited by Salamanca and Concina, who for this opinion cite 24 authors (6). This is proven by canon law, Solent 50, Dist. 1, by the Council of Chalons-sur-Saône, (1) 2, 2, q. 147, a. 6. (2) Lib. 3, n. 1050. (3) Ibid., Quest. II. (4) N. 1089, v. In confess. (5) Ibid. (6) Azor, tom. x, lib. 7, c. 11, qu. 4. Sylvius, tom. 3, in 2, 2, q. 147, art. 7, ad eoncl. 3. Sanchez, l. 5, cons. de obs. jejun. c. x, dub. 28. Natalis Alexander, l. 4, c. 5, art. 7, reg. 15. Antoine, tr. de virtute moral, part. x, post, cap. 3, append. de jejun. eccl., gu. 2. Françoja, in Bus, pag. 213. Anim. 3. Cuniliati, tract. 12, cap. 1, 2, n. 2. Others, apud Salamanca, tr. 25, cap. 2, n. 86. Concina, tom. 5, pag. 275, qu. 7.

[*Latin ed. p. 297*]

ON EXCULPATORY CAUSES. 285: "It is the opinion of some that those who eat before the evening office should not fast." Hence, it is clearly established that at that time (when refreshment was prescribed for the hour of None), that hour already belonged to the substance of the fast. Therefore, St. Thomas wrote: "When the Church establishes a certain time for eating for those who are fasting, those who anticipate it too much break the fast" (1). Others, however, deny that anticipating the meal is today a serious fault, as Lessius, Toletus, Bonaventure, Layman, and Salmeron, among many others, can be seen in our moral work (2) maintain. These assert, according to current custom, that the hour is not essential to the substance of the fast. But this reasoning (with all due respect to these authors) seems to me to be

quite unconvincing; for even Layman and Salmeron (3) themselves do not deny that, formerly, observing the hour was a serious matter, and indeed belonged to the substance of the fast. Given this, until it is proven that the current custom has superseded the ancient, serious precept, the latter undoubtedly holds; but this custom is not proven; or, at least, it is not certain, given that so many authors deny it. Therefore, although I once adhered to the second opinion, having now considered the matter more carefully, I now consider it to be quite unlikely. Then, it is questioned what constitutes a "notable" anticipation that is forbidden under a serious penalty? For the hour of fasting is to be measured morally, as St. Thomas teaches: "For fasting, a certain hour is required, not according to subtle examination, but according to a rough estimate; it suffices that it be about the ninth hour" (4). Hence, some say that a "notable" anticipation is more than an hour; and the Salmeronians assert that this is admitted by all; but Natalis Alexander rejects it. Others commonly assign as a serious anticipation the anticipation of a full hour; thus, Natalis Alexander, Sylvester, Azorius, Holzmüller, Concina, Antoine, Cunillati, and Françoja, in the places cited. Some authors assert that mendicants have a privilege from Leo X to anticipate the meal by two hours in winter, and by three hours in summer. But Françoja and Natalis Alexander say that no documents have been shown to prove this, and that, after careful inquiry, it has not been found. Azorius, Sylvester, Paludanus, and Navarrius say that one can be excused from this fault for any reasonable cause, namely, an urgent business, a weak constitution, the necessity of preaching, teaching, or reading at the table, the beginning of a journey, the service of guests, or the exercise of civility with friends; however, I do not believe that any of these causes are sufficient to excuse one from the precept, which is still serious today, as we have shown.

SECTION II. ON CAUSES THAT EXCUSE FROM FASTING.

22. I. Concerning dispensation, and who can grant it.

23. II. Concerning physical weakness.

24. Concerning moral weakness.

25. Concerning adolescents and the elderly.

26. III. Concerning labor.

27 and 28. Concerning travelers.

30 to 31. Concerning wealthy artisans.

32. If an artisan can fast without serious inconvenience.

33. He who undertakes a task without a valid reason.

34. IV. Concerning piety, and who is excused for this reason.

22. - THERE ARE four causes that excuse from fasting: dispensation, weakness, labor, and piety; let us speak of each separately.

I. Dispensation excuses.

(1) St. Thomas, 4th part, dist. 15, qu. 3, art. 4, qu. 3.

(2) Our work, book 5, n. 1016, vers. Quær.

(3) Salmeron, tract. 23, chap. 2, n. 9; Layman, de observ. jejun., 1, 4, tract. 8, chap. 1, n. 11.

(4) St. Thomas, 2-2, qu. 147, art. 7, ad 2.

[*Latin ed. p. 298*]

286 TRACTATE XII. ON CHURCH PRECEPTS. Dispensation. It is possible to grant dispensation from fasting, 1. By the Pope, with regard to the entire faithful; 2. By bishops, but only with regard to their own subjects, and only in particular cases; for granting dispensation concerning the entire community regarding the nature of food is reserved to the Apostolic See, as declared by Benedict XIV in the bull *Non ambigimus*. It is doubted whether a bishop can, for a particular reason, grant or change a universal fast at one time, when some urgent cause arises, e.g., if there is a danger that would otherwise not be observed during the fast. Many doctors affirm this, such as Azor, Sanch, Cajetan, Laym, Salm, etc., but Benedict XIV, in the bull *Prodiit jamdudum*, § 10, stated that the contrary opinion is more common and more grounded in reason, and thus he responded in this way to some bishops of Italy; nevertheless, I have said that the pontifical authority extends to that which ordinary authority cannot reach; therefore, a license was granted to the bishops for that year to transfer the feast of Saint Matthew, which had occurred on the last day of the Saturnalia (1). 3. Rectors can also grant dispensation from fasting to any of their subjects, as stated in treatise 2, no. 59. And this is also the case even when a bishop is present, as commonly stated by Sanch, Azor, the Council, Salm, etc., because such jurisdiction belongs to rectors by custom, which certainly confers jurisdiction, from c. *Contingat*, concerning the forum. And the same applies to vicars of rectors who exercise parochial functions, provided that the rector does not object; Sanch, Palat, Salm, etc. (2). 4. Regular prelates, and their local superiors and vicars, can do the same with their subjects and with themselves. But all of the aforementioned superiors, except the Pope, cannot grant dispensation unless there is a just cause; otherwise, the dispensation is invalid (3). As for what concerns the subject, Saint Thomas says (4) that if the cause that exempts from fasting is evident, the subject can exempt himself, especially if it would not be easy for him to go to his superior (this is understood to mean for the sake of his greater peace of mind); but if the cause is doubtful, he should undoubtedly go to the prelate. It should be noted that if the feast of the patron is on a day of fasting, the fast should be transferred to the preceding day; thus teaches Benedict XIV in the bull *Prodiit*, on January 30, 1751, with Cajetan, Sanch, the Council, book 5, chapter 1, number 27, and others commonly. 23. — II. Excuses: Infirmity, whether physical or moral. Due to physical

infirmity, the following are excused: 1. The infirm for whom fasting could be a notable detriment; and likewise, those who are convalescing, or the weak who cannot replenish themselves with sufficient food in a single meal. 2. Pregnant or nursing women, to whom fasting is indeed not permitted (unless once or twice, if the woman is robust); but more than that on the day of fasting, it is permitted for them to eat even meat, if any of them are weak, or if the child is infirm (5). 3. The poor are excused, who are lacking sufficient food for a single meal, as all say with Saint Thomas (6), who excuses those "who" cannot simultaneously have what is sufficient for their sustenance. Therefore, it is very probable that Sanch, with Angel, and Ronc, and Salmant, say that those who have nothing but bread, and herbs or legumes, are not obliged to have a single meal; since such foods are meager nourishment, and are sufficient only for those who are accustomed to such fare, because they often need to replenish themselves several times a day (7). (1) Book 3, no. 1052, ad 2, v. Bishops. — (2) Ibid., ad 3, v. Rectors. — (3) Ibid., ad 4, v. They can. — (4) 2-2, q. 147, 2, 4. — (5) Book 3, no. 1053. — (6) 2-2, q. 147, 9, 4 ad 4. — (7) Book 3, no. 1053, v. The poor are excused.

[*Latin ed. p. 299*]

DE CAUSIS EXCUSANTIBUS, ETC. 287 24. — Those who are excused due to moral weakness are: 1. All those who cannot fast without experiencing grave discomfort or an external difficulty. Therefore, 2. those who suffer severe headaches from fasting are excused; as stated by Castro, Lessius, Sanchez, Laym, Salm, and others. Some of this sort claim to take a small morsel in the morning and to dine late in order to replenish themselves; but Filliucca, Elbel, Viva, Tamburini, Fagundes, and many others rightly excuse them from this obligation, because deferring replenishment until evening is now a common practice and presents a considerable difficulty, and because it causes no small discomfort; therefore, the ancient discipline has been altered. 3. Soldiers, whether in camps or on duty, are excused, as commonly stated by Roncaglia, Concina, Pasquini, Salm, and others. 4. Wives are excused if they would experience grave anger from their husbands by fasting; and husbands are excused if they become otherwise impotent in fulfilling their conjugal duty; as stated by Sanchez, Cajetan, Navar, Laym, Salm, and Concina, among others. It is understood that they are excused if they become impotent *in performing* the act, but not if they are merely less potent or impotent *in desiring* it; unless the case is that the husband, by abstaining from solicitation, would be unable to prevent his wife from committing incontinence, or if there is suspicion that he desires another woman (1). 25. — The following are excused: 5. Adolescents who have not yet reached the age of 21; 6. Those who have reached the age of sixty. However, there is doubt whether such elderly individuals are excused even if they are of robust health? Bonaventure and Laym, among others, deny this; but many, such as Sanchez, Castro, Azorín, Roncaglia, Holzmann,

Salm, Mazzotta, Elbel, Viva, and others, rightly affirm it; both because this is a universal custom; and because it would be too scrupulous to require someone to determine whether they are, or are not, sufficiently robust to endure fasting; and also because (and this is the better reason) such elderly individuals, due to a lack of natural heat, cannot consume a sufficient amount of food at once, and require more frequent meals; and although some at that age may appear robust, their strength is easily deceptive and unreliable, since it cannot be denied that their strength diminishes each day and declines with age, so that if they become ill, they recover with difficulty. Galen wrote that, for the elderly, as for those recovering from illness, food must be carefully considered (2). And it is sufficient to have reached the age of 60 to be excused from fasting, as stated by Castro, Angles, Salm, Naldo, Viva, Busembach, Mazzotta, and others; because, in favorable circumstances, the year in which one reaches a certain age is considered to be complete (3). Others excuse women who have reached the age of fifty; but this opinion (unless some particular circumstance of infirmity or weakness is present) is rejected by many, including Laym, Tamburini, and Croix, among others. Therefore, Diana doubts its probability (4). However, if someone vowed to fast, and expressly stated that they would do so until death, or for the entire course of their life (regardless of what others may say), we maintain that such a person is bound to fast even after the age of sixty. Conversely, as Elbel and Anacletus hold, judgment should be made regarding someone who vowed to fast without such an expression, and without mentioning the age of sixty; because a notable change has occurred which, although perhaps not foreseen, excuses them from the vow, according to what is stated in sections 23 and 35 of Book 3, concerning Vows. And we make the same distinction regarding the rule of fasting, which is promised by religious (5). 26. — III. Labor excuses. First, property 30, condemned by Alexander VII, which stated: « All officials who are in the service of the republic (1) Book 3, section 1034, paragraph 4.

(2) Sections 1035 and 1036.

(3) At the end.

(4) Section 1037.

(5) Book 3, section 1038.

[*Latin ed. p. 300*]

288 TRACTATE XII. ON THE PRECEPTS OF THE CHURCH. "Those who labor physically are excused from the obligation of fasting, etc." This proposition was rightly condemned, because it was too general, and according to it, anyone who works, whether by duty, by inclination, or whose work is compatible with fasting or incompatible with it, would be excused; which is false. Moreover, even today, there is no one who doubts that all trades that cannot be practiced without excessive physical exertion excuse one from fasting. Therefore, diggers, farmers, stonemasons,

carpenters, weavers, wool combers, fullers, porters, coachmen, rowers, woodworkers, blacksmiths, bricklayers, tile makers, tailors, bakers, cooks who prepare many meals for many people, are excused if they work almost all day, as are printers who are constantly at the press; servants who are engaged in heavier tasks; but not maids who swim or perform some light task, or shopkeepers who go around the city; those who decorate churches, carrying ladders here and there; but all these are understood to be excused only when they spend a large part of the day in such work.

27. Barbers are ordinarily not excused, except because some (as commonly stated by Sanch., Lessius, Castrén, Mazella, etc.) are unable to practice their art by fasting, either due to the amount of work or due to a weak constitution. We say the same about tailors, according to Roncaglia and the Council of Trent, and also about notaries, scribes, painters, and clockmakers; but this applies especially to those who make small clocks, because for large clocks, a great deal of work is required. Others absolutely excuse millers, goldsmiths, and sculptors. But for these as well, the circumstances must be considered, always keeping in mind the commonly accepted rule that those who cannot practice their trade (even if it is not inherently laborious) without great inconvenience, due to their weakness or some other particular reason, are not obliged to fast.

28. Those who spend a large part of the day traveling on foot are also excused from fasting, such as muleteers and messengers. However, it should be noted that if one of them, after completing their journey, and without having taken any other refreshment beforehand, eats enough food, they cannot take a second refreshment unless they are to continue their journey the next day. Furthermore, everyone is obliged (if it is convenient) to postpone their journey, so as not to be excused from fasting, as taught by St. Thomas (4), whom Lessius, Layman, and Tollet follow, and according to what we will say shortly in n. 33. But if someone has already started their journey, and a day of fasting falls during that time, they are not obliged to interrupt their journey to fast, as commonly stated by Sanch., Layman, Abulafia, and Sporer (5).

29. Question 1. What distance is sufficient to excuse one from fasting? Pasqualigo believes that a journey of seven miles is sufficient; but this opinion is rejected by others, who require at least a journey of 4 or 5 leagues (that is, 12 or 15 miles; since three miles make up one league, or one hour of travel, as Croix says); so say Palaus, Viva, and Salm, as well as Diana and Trull. But Croix, along with Bonaventure and Fillon, require at least 5 leagues. However, if the road is difficult and rough, or if the traveler is weak or not accustomed to traveling, and they cannot fast without great difficulty, then Sanch., Salm, Roncaglia, and Croix say that a journey of even six miles is sufficient to excuse one (6).

30. Question 2. Are those who are traveling excused from fasting abso-

lutely? This proposition (31) was condemned by Alexander VII: "Those who are traveling are absolutely excused..." (1) N. 1041. — (2) Ibid., see Barbers. — (3) Ibid., see Others. — (4) 2-2, question 147, article 4, ad 3. — (5) Ibid., 5, n. 1047. — (6) Ibid., see Sed dubit. I.

[*Latin ed. p. 301*]

ON CAUSES FOR EXEMPTION, ETC. 289 "All those who travel by riding, whatever the manner of their travel, are excused, even if the journey is not necessary, and even if they complete it in a single day."

Furthermore, the Doctors commonly excuse those who travel for several days; Laym and Viva require a journey of eight days; but this seems too strict. However, Viva also points out that those who can fast while traveling without serious inconvenience are not excused from fasting. Conversely, Azor and Sanch rightly state that even a journey of a single day can excuse someone who must complete it with great effort (as is the case with messengers), or if they are weak, or if the weather is inclement, the road is rough and arduous, or if the journey is extraordinary. However, Sanchez, Toletus, the Salmanticenses, Corell, and others believe that a journey of 8 or 10 leagues is not extraordinary (contrary to Machado and Diana, etc.). Viva reasonably states that those traveling should preferably consume dairy products and observe the fast, rather than consuming lighter foods that do not sustain them, and then needing to replenish their strength multiple times (1).

31. — It is questioned: 3. Are wealthy artisans, engaged in laborious trades, obligated to fast? P. Concina, along with Durando and Armilla, affirms this. But commonly, Sylv., Sanch., Nav., Less., Ronc., Tol., Viva, Salm., Elbel, and many others deny this, because it is for the good of the public that artisans not cease their work; for if the poor were only to be excused from working for them on days of fasting, the republic would suffer harm. And for this reason, all the aforementioned authors cite a declaration by Eugene IV, in the year 1440, in which he stated: "Artisans engaged in laborious trades, and farmers," whether rich or poor, "are not obligated to fast under the precept of mortal sin, etc." (2).

32. — It is questioned: 4. Are artisans obligated to fast if they can fast without serious inconvenience? Some, such as Tamb., Pasq., and Leand., absolutely deny this, both because of contrary custom and because the laws do not consider extraordinary circumstances. Others, however, more commonly and plausibly affirm that artisans are obligated to fast, provided that fasting does not cause them serious inconvenience; but if this is not evident, then, in case of doubt, the presumption is that they are exempt from fasting (3). The second opinion seems more probable in theory, since the law generally obligates anyone who can fast without serious inconvenience; but in practice, it is difficult to find someone who, after such labor, is not fatigued or weakened for the next day's work (3). The same applies

to an artisan who takes a day or two off from work; for although it is the common opinion of Azor, Sanch., Ronc., Bonac., Croix, etc., that they are not obligated to fast on those two days (on the first day because of the previous day's labor, and on the second day because of the next day's labor), nevertheless, if they can fast without serious inconvenience, they are obligated, as rightly stated by Bonac. and Viva, contrary to Sanch. and Elbel (4).

33. — It is questioned: 5. Does one sin who undertakes labor without a just cause, thereby being excused from fasting? Some deny this, such as Ronc. and Bon., provided that the labor is not undertaken with the intention of being excused from fasting. Others, such as Salm. and Pasq., excuse such a person, even if they undertake such labor in order to avoid fasting, saying that it is lawful for them to use the right that exempts them from fasting. We, however, say that one sins, even if they do not labor in order to deceive, and this is the opinion of Pal., Sanch., Laym., Croix, and others; as we stated in section 2, paragraph 20, every law requires that no impediment be placed in the way of observing it without a just cause.

(1) Book 3, paragraph 1647. Doubt 2.

(2) Paragraph 1042.

(3) Paragraph 1043.

(4) Paragraph 1044.

[*Latin ed. p. 302*]

290 TRACTATE XII. ON ECCLESIASTICAL PRECEPTS. St. Thomas plainly teaches (1) that one sins who engages in a work that subsequently prevents him from hearing Mass, and he gives the reason: "For he who desires something, with which another thing cannot coexist, consequently desires to be without that other thing." It is said that one sins; however, if someone undertakes a work with the intention of fasting, that person would not sin if, being fatigued by that work, he were to break the fast; for all, commonly, including Layman, Council of Sylv., Sanch., Palaus, etc., agree that it is permissible for someone who, through fraud or some other wicked intention, has already ceased to be able to perform a certain heavy labor, not to fast; because at that point, he is morally incapable of fasting. Furthermore, Sanch. states that if someone works for an honest purpose, e.g., to visit relatives, to go hunting, or to indulge in a game of ball, that person would not sin; but this general assertion is rightly contradicted by Abelly and Spor. if the journey or labor is undertaken solely for mental amusement. Those who undertake a heavy labor for great profit, Nav., Cajet., Layman, Sanch., Spor., Elbel, etc., state with probability that such a person does not sin, even if he does not work according to his own profession (2). This is related to what is said in Tractate 6, n. 22; for, according to l. un., c. de sent. magni lucri amissio is considered a serious

loss. 34. — IV. Piety excuses, e.g., when someone ought to dedicate himself to a pious work that is of greater merit than fasting. Sanch., Bon., Armilla, Gabr., Salm., etc. (contrary to others), admit this, even if the work is not performed according to one's profession or obedience, but solely out of devotion; provided that it cannot be postponed to another time (3). Hence, the doctors excuse: 1. those who assist many sick people with great labor, Castrop., Holzm., Salm., etc.; 2. those who have undertaken a pilgrimage that would greatly benefit the glory of God and the common edification of the people, or the great progress of their own soul, as Sanch., Castrop., Sylv., Holzm., Salm., etc., state, provided that they cannot conveniently postpone it, as stated above, and as Less., Layman, Salm., Holzm. rightly limit it with St. Thomas (4), who says: "If a pilgrimage, or the labor of a work can be conveniently postponed, or diminished without detriment to corporal health, the fasts of the Church are not to be omitted." But if the pilgrimage has already begun, and some days of fasting occur in the meantime, it should not therefore be interrupted, Layman, Abul., Sanch., Salm., Spor., etc.; 3. preachers who are preached to daily during Lent, due to the effort and agitation of the body; and this is especially true for missionaries who preach with greater zeal; so say commonly Wigandt, Cajet., Nav., Tolet., Salm., etc. However, I say that sacred orators, who ought to prech by example rather than by words, should, as far as their strength allows, strive to observe the fast. Nor can I agree (speaking generally) with those doctors who also excuse those preachers who are preached to three or four times a week; 4. many excuse singers who would lose their voice by fasting, and readers of sciences (Sanch. adds and teachers of grammar); because they require great effort and labor. The same is said of lawyers and judges, who must devote their mind with great attention to their studies in order to fulfill their duties; for these, because of the consumption of their spirit, need food, if not in greater quantity, at least more frequently; thus Castr., Ronc., Salm., Sanch., Spor., Viva, etc., excuse confessors who are about to undertake extraordinary labor in order to assist penitents who come in large numbers. But Tam. rightly points out (1) s. s. g. 71. a. 0. — (2) Lib. 3. n. 1066. — (3) N. 1065. — (4) s. s. g. 147. a. 4 ad b.

[*Latin ed. p. 303*]

OF THE PRECEPT OF CONFESSION, ETC. 291. Those who are unable to fulfill their obligation by fasting should be excused, since they cannot perform their duty in that manner; and this inability should be considered valid, because the law of fasting is subject to doubt. Furthermore, Layman, Navar, Cajetan, Sylvestri, Tollet, and Spinerius state that if someone does not have a sufficient reason to be excused from the Lenten fast, but nevertheless believes in good faith that they have a just cause to fulfill the precept by fasting only three or four times during the week, the confessor

should not obligate them to fast daily, since there is a risk that they will then neglect the daily fast.

CHAPTER II. OF THE ANNUAL PRECEPT OF CONFESSION AND COMMUNION.

35. Concerning the annual precept of confession: Does it obligate those who have only venial sins? And does it obligate those who foresee the need to confess to do so beforehand, etc.?

36. Is someone who neglected confession in the past obligated to confess as soon as possible? And what sins are committed by those who neglect it?

37. Does someone who confesses in the following year fulfill the obligation of the previous year?

38. What are the penalties for those who transgress?

39. Concerning the precept of Paschal communion.

40. Is someone who neglects it obligated to confess and receive communion as soon as possible? And are they obligated to do so beforehand, etc.?

41. Should excommunicated persons, etc., and those held in prison, have their confession and communion performed in their parish?

42. Are priests, travelers, and servants of monasteries exempt from this obligation?

43. At what age, and when, should children receive communion?

44. When should young people receive communion?

35. Regarding the precept of annual confession, it is known that in the Lateran Council, under Pope Innocent III, it was decreed that each faithful person, upon reaching the age of reason, should confess all their sins at least once a year; thus, in chapter 5 of the decree "Omnis utriusque sexus, de pænit. et rem.," it states: "Every person of either sex, after reaching the age of discretion, should faithfully confess all their sins to their own priest at least once a year."

It is said: 1. Every faithful person: This refers to every baptized person, even a heretic. 2. After reaching the age of discretion: This refers to someone who has attained the use of reason, at least in a general way, and who, if they have sinned, has incurred punishment. Therefore, as we stated in part 2, number 37, those who have sinned before the age of seven are obligated by this precept if they have already attained the use of reason; for the council obligates everyone who has already reached the age of discretion. 3. All their sins: Here, the question arises whether they are obligated to confess sins committed in the year in which they do not commit any mortal sins? Sylvestri and others, along with Bonacini, affirm this; but the common opinion and the truer view, along with St. Antoninus, Cano, Suarez, Cajetan, and Lugat, deny this, because the Church, by commanding confession,

commands the confession that must be made according to the institution of Jesus Christ; but the Lord does not command anything except the confession of mortal sins, as declared by the Council of Trent, session 14, chapter 5, on penance. And this is derived from the same text cited, where it says: "They should faithfully confess all their sins." By saying "all," it is certainly understood to mean only mortal sins, since it is certain that there is no obligation to confess all venial sins to anyone who wishes to confess them. 4. At least once a year: This year should properly begin from January and end in December; but according to common custom, it is understood from Easter to Easter, as stated by Suarez, Lugat, and the Council of Holsm. (1). Here arises another doubt: If someone foresees that they will not have the opportunity to confess throughout the year, should they do so beforehand, before the year ends? Holsman denies this; but we affirm it, along with Busembach and Lugat (2), because if someone has already committed a mortal sin, they have already incurred the obligation to confess during that year; therefore, if (1) Book 8, number 662. (2) Number 671.

[*Latin ed. p. 304*]

292 TRACTATE XII. ON CHURCH PRECEPTS. He who foresees that he will be unable to fulfill a precept at a later time is obligated to fulfill it beforehand. It is said: 5. He must confess faithfully; therefore, he does not satisfy the precept by an invalid confession, much less by a sacrilegious one; for this reason, the proposition 54 by Alexander VII, which stated: "He who makes a confession voluntarily, even if it is invalid, satisfies the precept of the Church," is rightly condemned; because a confession that is not true is not a true confession. It is said: 6. To his own priest: This is understood not only as the parish priest, but as any priest approved to hear confessions, as explained by the Glossary, and as understood by Fagnanus, Cabass, and others in general. And this is not doubted today by universal custom: therefore, in the year 1584, the Sacred Congregation declared that if a bishop were to order that no confessor hear the confessions of penitents during Easter without the permission of the pastor, such a decree would have no validity (1). 36. — It is questioned: 1. If someone who was obligated to confess has delayed for a year, is he obligated to confess as soon as possible? St. Antoninus, Soto, Sylvester of Turin, etc., deny this, saying that although there is a divine precept to confess frequently in life, with respect to the annual confession, the precept is ecclesiastical, and it is attached to the year; therefore, once that year has passed, the precept ceases. However, the more common opinion, which we follow with Gonet, Suarez, Navar, Lugdunum, and Tournus, and with Lambertini (2), affirms this, both because of the divine precept left to the determination of the Church: and the Church has determined to obligate at least once a year, as held by the more probable and common opinion (3); and also because of the ecclesiastical precept imposed, that each person confess at least once a year,

not to complete the obligation, but to remind of the obligation (4). Some, such as Sylvester, Layman, and Valentia, etc., say that one continuous sin is committed; but others, such as Bonaventure, Suarez, Lugo, Vasquez, etc., more probably say that sin is committed as often as opportunities arise and are neglected: since that sin does not persist in any effect, but only in a bad intention, for which reason sins are multiplied, as we said in tractate 3, no. 46. 37. — It is questioned: 2. If someone confesses the sins of the past year in the following year, does he satisfy the precept of both years? Some affirm, others deny. But the truer opinion, as held by Castresano, Vives, Hurtado, and Salamanca, etc., makes this distinction: if he confesses both mortal sins of the past year and of the present year, then he rightly satisfies the precept of both, because he has now fulfilled the purpose of the precept, which is reconciliation with God from the sins of that year; but not if he confesses only grave sins of the past year in the following year; if, after the confession, he falls into other mortal sins, he is obligated to confess again, in order to satisfy the precept of the subsequent year: but it is commonly said by Suarez, Layman, Castresano, Salamanca, Lugdunum, etc., that if someone confesses only venial sins at the beginning of the year, he is obligated to confess again. Therefore, that confession of mortal sins of the previous year does not have the force of satisfying the precept of the subsequent year (5). 38. — According to the general law, as stated in chapter 1, those who violate the precepts of confession and Holy Communion incur two penalties: namely, interdict and deprivation of ecclesiastical burial. But these penalties are not incurred unless after a judicial sentence. Minors are universally excused, as the doctors commonly say (6). In this circumstance and at this time (1) Lib. 6, no. 669, end, and 672. — (2) Notitia, vol. 3, page 97. — (3) Lib. 6, no. 663. — (4) Nos. 668, 997. — (5) No. 669. — (6) No. 674.

[*Latin ed. p. 305*]

ON THE PRECEPT OF COMMUNION, ETC. 293. Furthermore, let us emphasize the precept of Communion, as we have spoken of this sacrament of Penance. 39. Regarding the precept of Paschal Communion, it must be understood to be both divine and ecclesiastical. It is divine because of what the Lord said in John 6:54: "Then Jesus said to them," "Unless you eat the flesh of the Son of man, and drink his blood, you shall not have life in you." It is also ecclesiastical, because in the cited chapter, it is commanded that "everyone reverently receive at least once during Easter the sacrament of the Eucharist." And in the Council of Trent, Session 13, Canon 9, it is decreed: "If anyone denies that all the faithful are bound each year, at least during Easter, to receive Communion according to the precept of Holy Mother Church, let him be anathema." The year of this obligation is counted from Easter to Easter, according to the common custom currently observed. The Paschal season begins on Palm Sunday and ends

on Low Sunday, according to the declaration of Eugene IV in the bulla *Fide digna*, in the year 1440. However, bishops, by privilege or custom, may extend this period, as is often the case. (1). 40. As we said regarding Confession, so we say regarding Communion, that if someone is unable to receive Communion during the Paschal season, he is obligated to receive it as soon as possible; because it is a precept that is both divine (determined by the Church to be observed each Easter) and ecclesiastical, which assigns the Paschal season not to end the obligation, but to encourage fulfillment (2). It is doubtful whether someone who foresees that he will not be able to receive Communion at Easter is obligated to anticipate Communion. We have affirmed this regarding Confession, because if someone has committed a mortal sin, he has already incurred the obligation to confess within the year; therefore, if he foresees that he will lose the ability to confess in the future, he is obligated to do so before the year ends. But this does not apply to Communion, as correctly stated by Suarez, Azorín, and Holzmüller, etc. (against Luym and Habert), because the obligation to receive Communion, according to common opinion, does not begin until the beginning of the Paschal season, so that before that time, the obligation has not yet been incurred; and if someone anticipates, he does not fulfill the precept (3); and this is as if someone were to anticipate due to a specific impediment, and then the impediment ceased, he would still be obligated to receive Communion at Easter, as correctly stated by Lugo, Salm, etc. (against Tamb.) (4). It is not at all doubtful that, at the beginning of the Paschal season, if someone foresees that he will be prevented from receiving Communion later, he is obligated to receive it immediately (5). 41. Note I: Excommunicated persons and those detained in prisons are obligated, if they can, to seek absolution or freedom, so that they may fulfill the Paschal precept, since it is a divine precept, as stated (6). Note II: No one can fulfill the precept of Communion outside the parish, or at least outside the cathedral (as Bonacini and Busembach probably admit, against Lugo; and Lugo himself does not know whether this is a probable fulfillment, if the common use is lacking, which would imply the consent of the bishop) without the permission of the parish priest, or the bishop, or his vicar; however, in this case, presumed or interpretative permission is sufficient, as stated by Suarez, Lugo, Salm, and Busembach, provided that there is moral certainty of the consent of that person (7). Some have affirmed that it is permissible to receive Paschal Communion in the churches of regular canons, due to their privileges; but generally, this is disapproved. (1) Lib. 6, n. 356 and 296. — (2) N. 297. — (3) N. 298. — (4) N. 297, near the end, v. Dicit. — (5) N. 298, at the end. — (6) N. 299. — (7) N. 300.

[*Latin ed. p. 306*]

294 TRACTATE XII. ON CHURCH LAWS. It has been decided by Suar, Lugo, Salm, Tambur, etc., with the decree of the Sacred Congregation. Priv-

ileges do not override this, as the Popes have repeatedly declared that the right of parish priests must be preserved regarding Paschal Communion. And especially Clement VIII, in the year 1592, after declaring that religious are permitted at any time, even during Easter, to hear confessions of the laity, added: "Provided, however, that they receive the Sacrament of the Eucharist on the feast of the Resurrection in their own parish from their own parish priest." Clement X also decreed (1). Moreover, in Pope Benedict XIV (2), there is a decree of the Sacred Congregation of July 9, 1644, and confirmed on June 11, 1650, which states that bishops can prohibit religious from administering the Eucharist to the laity on Easter, even if the religious have fulfilled the obligation of the Church. And although on January 31, 1687, the same Sacred Congregation, at the request of the parish priests of Louvain, who argued that the Fathers of the Society of Jesus could not administer the Eucharist throughout the entire Easter season, responded that they could administer it, except on Easter Day, it must be understood that this is subject to the prohibition of the bishop.

42. — NOTE III. The following are exempt from this obligation:

1. Priests who celebrate Mass elsewhere fulfill the obligation, according to the common opinion; if they do not celebrate Mass, they are bound to receive Communion in their parish.

2. Pilgrims who are far from their own parish can receive Communion in any church; they are not bound to receive Communion in the parish where they are found: so commonly state Cajetan, Soto, Azor, Suar, Lugo, Sanchez, Bonaventure, Castrop, Salm, and others (against Barbatus, Tournhem, and Roncaglia). The reason is that they do not have their own pastor who should recognize them, so the purpose of receiving Communion in the parish completely ceases (3).

3. Servants of monasteries, who live within the same enclosure and are under the obedience of their superiors, are exempt, as rightly maintained by Lambertini (4) with Wigand, and by numerous decrees of the Sacred Congregation (against Castrop, Bonaventure, Salm, Roncaglia, etc.), who exempt all those who live in monasteries. And although the Society of Jesus has a privilege for all those who live in their houses, Father Zacharias (5) reports that the Sacred Congregation has repeatedly declared that this privilege does not extend to other religious orders (6).

43. — NOTE IV. According to the Council of the Lateran Palace, children before the use of reason, and those who are perpetually insane, are prohibited from receiving Communion. But the question arises: can and should children who have attained the use of reason and are capable of confession receive Communion? Paleario, St. Antoninus, etc., affirm this, but others commonly and probably deny it: for Communion requires greater reverence, and therefore also greater knowledge; at least, this obligation is understood in this way by the common practice of the Church. However, it

is very probable that Suar, Soto, Layman, Castrop, etc., with St. Thomas (7), say that although such small children are not obliged, if they can nevertheless distinguish this heavenly bread from earthly bread, they can be admitted to Communion: "Because," says the Doctor, "they can conceive some devotion." And this is confirmed by canon penult. 26, question 6, which says: "To whom the Sacrament of Penance is granted, the Sacrament of the Eucharist should not be denied, if he desires it." And for those children who are at the very end of life, it is not only permissible, but also necessary (1).

(1) Lambertini, Not. 18, n. 7.

(2) De Syn. l. g. c. 16, n. 3.

(3) Lib. 6, n. 240 ad 9. v. Huic.

(4) Notif. 55.

(5) Ap. Croix, lib. 6, p. 1, n. 614.

(6) Lib. 6, n. 240 ad 10.

(7) 3. part, quest. 80, art. 9.

[*Latin ed. p. 307*]

ON THE PRECEPT OF CONFESSION, etc. 295. To give Communion, as the aforementioned Doctors commonly state with Benedict XIV (1); because in such a matter, they are bound by divine law to communicate, since they are able to use reason. However, the Doctors commonly state (speaking generally), that the obligation to communicate begins at the age of nine, and cannot be deferred beyond the age of twelve, or beyond fourteen at the latest; thus Suar., Laym., Antoine, Croix, etc. The holy Charles ordered the parish priests to instruct the children who had reached the age of ten for Communion (2). 44. Finally, it is asked whether the Eucharist can be administered to the insane. It has already been stated that Communion must always be denied to those who are perpetually insane, even in articulo mortis, as is stated in the Roman Ritual (concerning the Eucharist). To others who are insane, but who have not always been deprived of reason, it can be given (as the Ritual itself states) if they have some glimmer of understanding; or, as St. Thomas states (3): "If they were previously of sound mind," and devotion to this Sacrament appears in them, "unless the danger of expulsion is feared"; and the Roman Catechism also says the same (4). From this, many Doctors rightly infer that it is sufficient for the Eucharist to be given to the demented in articulo mortis, if they have previously lived a pious life (5). As for the semi-insane, Castrop., Wigandt, Laym., Holzm., Salm., etc., state that Communion can only be administered to them at the very end of life, and by order of the Paschal precept, provided they are always able to distinguish it from earthly food. Laym., Castrop., and Salm. also assert the same regarding the deaf and dumb from birth, provided that it is clear from their signs that they understand that the

divine person is contained in the Sacrament (6).

TREATISE XIII. ON PARTICULAR PRECEPTS FOR CERTAIN STATES OF MEN. CHAPTER I. ON THE RELIGIOUS STATE. POINT I. ON THE OBLIGATION OF RELIGIOUS PROFESSION. 1. What is the religious state, and who can approve of religious orders? 2. A religious is bound to strive for perfection; when does he sin against this obligation, and when does the superior sin by not correcting him? 3. The age, acceptance, and spontaneous deliberation required for profession. Causes of nullity, etc. 4. Are bishops bound by vows and rules, and what about those who are fugitives and those who are expelled? Causes of expulsion. 1. RELIGION, speaking according to the state of life, is defined as: "A state approved by the Church of those living in common, and striving for perfection through the vows of poverty, chastity, and obedience." 1. It is called "approved by the Church" because religious orders are first approved by bishops, but it was established by the Lateran Council that in the future they should only be approved by the Apostolic See. 2. It is called "striving for perfection" because every religious is bound by the force of his profession to strive for perfection, as he is bound to observe...

(1) De Synod. lib. 7. c. 12. n. 3.

(2) Lib. 6. n. 301. v. Sed hic.

(3) 3. p. q. 50. a. 9.

(4) P. 2. n. 70.

(5) Lib. 6. n. 302.

(6) N. 305.

[*Latin ed. p. 308*]

296 TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. Certain things are proper to one's state of life; these are matters of counsel, not of precept. Therefore, a religious person sins gravely against this obligation, 1. if he violates the rules of his order out of contempt, that is, if he considers them to be useless, or because he does not want to subject himself to them; otherwise, as St. Thomas says (1), one can violate the rules in another way (and often does so), and if those rules do not obligate under pain of a grave sin, the fault does not exceed venial sin. However, even if a rule does not obligate under pain of mortal sin, one is never excused from venial sin if he knowingly and without just cause violates it; Laym., Sanch., Valent., and others, with the same St. Thomas (2); 2. if he leads others to relax the rule, or a rule of greater importance, such as silence, prayer, or the like, to the detriment of the common discipline (3); 3. if he absolutely declares that perfection is to be found in nothing. But it is asked whether one sins gravely if he intends to observe only those rules that obligate under pain of mortal sin, and neglects the others? Many excuse him, but many do not. But Sanch. says that it will be difficult for him to be excused from mortal sin, at least in

other respects, namely, because of the danger to which he exposes himself, either by sinning against his vows, or by leading (as has been said) the community to relax the rule (4). And it should be noted that although the subjects may not sin venially, the superiors who neglect to correct them sin gravely, especially when there are many such faults, and of such a nature that they can relax discipline, such as violations of silence, omissions of prayer, fasts, etc. And so, too, he sins gravely (as Suarez and others say) who performs the office of a zealous one, if he neglects to inform the superior of the defects he observes (5). Furthermore, St. Thomas says (6) that the superior (if necessary) can even flog the subject, and rebuke him with words, provided that he does not do so out of anger, nor in the presence of outsiders, nor of novices. 3. — It is said that 3. vows, poverty, chastity, and obedience, are essential because the essence of religious life consists in those three vows. It should be noted that 1. for the validity of a religious profession, it is not required that the vows be solemn; however, three things are necessary: I. that the subject be sixteen years of age, and that he have spent a full year in the novitiate, and that he have no impediment from substantial reasons for the order to which he is to profess, as decreed by the Council of Trent, Session 25, canon 25, concerning regular canons and monks. And with regard to women, the Sacred Congregation further declared that no one should be given the habit before the age of 12, contrary to Sanch. and Villalob., etc. Furthermore, before the habit is received, and before the profession is made, the bishop or his vicar must ascertain the will of each girl, otherwise a grave sin would be committed, even if the profession were valid. And it is noted that the bishop can ascertain the will of the girls even in monasteries exempt (7). II. The acceptance of the superior and the chapter is required, according to the statutes of each order. And an error regarding the essential elements, whether concerning the part of the superior or the one professing, invalidates the profession (8). III. It is required that the profession be spontaneous, and not made out of fear instilled by others for that purpose, or out of reverential fear of parents, or out of importunate and repeated prayers, from which the novice fears grave indignation if he does not profess (9). Whoever has not made a profession, and wishes to leave the religious life, must appeal within five years, otherwise he will no longer be heard, according to the Council of Trent, Session 25, canon 19, because it is presumed to have been fulfilled. And on this point, it is useful to note some things established by Benedict XIV, in the bull Si datam (1), 2, 2, question 186, answer 9, to 3. — (2) Book 4, number 10. — (3) Ibid., Response III. — (4) Book 4, number 11. — (5) Number 13. — (6) 2, 2, question 72, answer 2, to 2. — (7) Book 4, number 5. — (8) Number 6. — (9) Number 7.

[*Latin ed. p. 309*]

ON THE OBLIGATION OF VOWS. 297 (47 in vol. 6, Bull.). Namely,

1. that no one can expel another, unless a judicial cause is first known; 2. that causes of nullity must be investigated both by the local regular prelate and by the local ordinary; 3. that a professed person, even if he does not appeal within five years, can nevertheless obtain restitution in integrum from the Apostolic See; 4. that a professed person cannot leave the religious order immediately after the first sentence, but must wait for a second, if an appeal is pending (1). 4. — Note that 2. regular bishops are not absolved from their vows, except to the extent that their observance conflicts with the episcopal state; thus, St. Thomas (2), and generally others from the canon. Statutum, n. 18, q. 1. Therefore, St. Thomas teaches that a regular bishop cannot make a will (3). On the other hand, it is highly probable that a regular bishop is not bound by the rules of his order, as inferred from the cited passage, which reads: "A monk whom canonical election has absolved from the yoke of the rule, etc." And so, he is not bound by the other vows of his religion (4). A religious person promoted to a parish is bound both by his vows and by the rule, according to the more probable opinion; and he is bound to wear the habit (5). All of these things also apply to fugitive religious persons; and it should be noted that whatever these persons acquire, they acquire for the monastery. Those who are expelled remain bound by the vow of chastity, but with regard to poverty, all that they acquire is used by them, but the ownership belongs to the monastery; and with regard to obedience and the rules, and even divine office, they are not bound by them as long as they are not received again. The causes for expelling a religious person are these: 1. if, while received, he concealed some essential impediment, or some very harmful defect to the community, such as leprosy, or some other such disease; 2. if he committed some infamous crime, which will be a detriment to the entire religious order; 3. if he is incorrigible in other crimes. Formerly, for any serious offense, even one admitted once, religious persons could be expelled; but Urban VIII, in the year 1644, declared that no one (except for the Society of Jesus) can be expelled unless he is incorrigible, but that only punishments such as fasting and imprisonment can be imposed: which must always be observed with incorrigible nuns (6).

POINT II. ON THE OBLIGATION OF VOWS. 5. I. Concerning the vow of poverty. About manuscripts. — 6. About a private fund. — 7. When is there a sin against the vow of poverty? — 8 and 9. About the prohibition of donations. — 10. How much is a serious matter, and when is a religious person bound to restore? — 11. Is a presumed license sufficient? — 12. What if a license has been unjustly denied? When would a prelate refuse a license, if he knew, etc.? Can those who are notorious give donations, and grant a license? — 13. What if a religious person spends money on games of chance? — 15. II. Concerning the vow of chastity, and concerning enclosure. — 16. III. Concerning the vow of obedience, when it is binding, and concerning what. — 17. If the chapter commands the former observance.

Disobedience is a double sin. Whether there is doubt about the obligation of obedience. — 18. If the precept is to reveal a secret. — 19. If a new circumstance arises. — 20. If a subordinate gives a license denied by a superior. — 21. To whom are nuns bound to obey? — 22. What about the election of an abbess? 5. — It is forbidden to religious persons, by the vow of poverty, to possess or dispose of anything of estimable value. Manuscripts are excepted, as Lugo, Tournely, Sporer, Salm, etc., rightly say (contrary to Henno) (1). Lib. 4. n. 8. — (2) 2. 2. q. 39, a. 15 ad 4. — (3) Lib. 4. n. 3. — (4) N. 3. — (5) N. 4. — (6) N. 79 et seqq.

[*Latin ed. p. 310*]

298 TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. Rather, they are spiritual, since they are products of the mind. This is demonstrated both by the Brief of Benedict XIII, where it is stated that religious men promoted to the episcopate must hand over all their goods to their superiors, except for manuscripts; and by another declaration of Clement VIII, where it is stated that religious men can dispose of manuscripts even without permission. The same is said by Salm. on sacred relics (1). 6. Now, the vow of poverty does not contradict 1. the possession of goods in common, as taught by St. Thomas (2), and as is expressed in the Council of Trent, session 25, chapter 3, concerning regular canons and monks, and in Extr. de Verb. signif. It does not contradict 2. a peculium, or livelihood, which religious men retain in many orders with the permission of the prelate, because, according to the Council of Trent, session 25, chapter 2, it cannot be doubted that this is prohibited, since it is said: "No one" is permitted to possess immovable or movable property... even in the name of the community; nevertheless, by custom, which has now become almost universal, and tolerated by the Holy See, it is permitted to have a peculium with the permission of the superiors for necessary and honest uses, provided that the religious man is prepared to relinquish it at the request of the prelate; while the vow of poverty, although it cannot be abrogated in substance, can nevertheless (as the doctors commonly say) be changed in mode, according to custom, which is presumed to be just whenever it is practiced even by religious men of good standing, and tolerated by superiors who are aware of it, and, if they can easily do so, do not contradict it. But it must be noted 1. that if any prelate were to permit the use of a peculium without a clear necessity where it does not exist, I would not know how to excuse him from a grave fault, not already for the reason of violating the vow, but because of the laxity that would arise from such use. It must be noted 2. that those who in any monastery would wish to restore common life, cannot be opposed by the subjects, as commonly stated by Suarez, Navar, Lessius, and others; because although it is not against the vow not to observe common life, it is against the vow to refuse it; always and (it is understood,) provided that the superiors sufficiently consider the needs of each individual (3). 7. It is

certainly a sin against the vow if a religious man 1. applies something of what has been given to him for a certain use to another use, while he cannot use it except as far as the superior permits (4); 2. gives something to others for use, benefit, or loan. However, Laym, Sanch, Peyrin, and de Alex, in their work on nuns, say that it is not a grave sin if he is certain of restitution (5); 3. if he receives, uses, or gives something without the permission of the prelate, and in that case he is obliged to make restitution. The same is true if he receives money without permission in order to dispose of it at his own discretion, even for works of piety; because a religious man cannot have either property or the use of a thing independently of the prelate, see Rodriguez, p. 3, tr. 3, c. 1, with Azor. The same must be said if he conceals something in order to keep it from the prelate's disposal. The same also applies if he remits something to a debtor of what he has already acquired, or if he remits some inheritance or legacy left to him; but not if he refuses to accept a donation made to him; the reason being that a religious man, before accepting a donation, acquires no right over it; but over the inheritance or legacy left to a religious man after the death of the testator, the monastery immediately acquires a right, as commonly stated by Lugo, Sanch, Tourn, etc. He could only sin in this regard against charity.

(1) Book 4, no. 14.

(2) 2. 2. q. 466, a. 5.

(3) Book 4, no. 15, towards the end.

(4) No. 29.

(5) No. 27.

[*Latin ed. p. 311*]

ON THE OBLIGATION OF VOWS. 299, lest they impede the good of their monastery; but not against the vow which obligates one not to alienate what has been acquired, but not to acquire (1). Just as it is denied that a religious can donate without permission, so too can they make a will. However, Father de Alex says that if a religious leaves something to someone with permission, and after his death, the superior promises to fulfill his will, the superior is bound to keep his promise, just as the lord is bound to keep the promises made to the slave, as Lessius and Sanch say (2). 8. But speaking especially of donations, it is necessary to note what Clement VIII established in his bull *Religiosæ* 28. I. He forbade religious subjects and superiors, under penalty of deprivation of office, and of active and passive voice, and of the incapacity incurred by this very fact, to make any donation, whether in their own name or in the name of the community, even to their own religious or superiors, unless the general chapter consents, except for food and drink, or objects of devotion of small value, or if something is given in alms for necessity, or if hospitality is exercised: but all these things with the permission of the superiors. II. He forbade superiors to prepare

banquets contrary to religious frugality for any person, or for any feast. III. He established that no one should receive donations contrary to the aforementioned bull, and thereby acquire any ownership, but should be held to restore the donation to the monastery, and should not be absolved unless he first restores it; and that such a restoration should not be remitted, nor made to the poor. But Urban VIII, in the bull *Nuper*, 158, although he confirmed and amended the bull of Clement, nevertheless tempered it in some respects. 1. Regarding donations, he permitted those that are made for the sake of virtue and merit, namely, for remuneration or gratitude, or for alms (which, as La Croix says, do not come under the name of gifts), but also with the consent of the local superior, saying that the permission given orally is sufficient. II. Regarding banquets, he permitted those that are ordered for the arrival of ordinaries or benefactors, provided that they do not contradict religious decency. III. Regarding the restoration of donations, he said that it could be made to a monastery closer by if it could not be conveniently made to the proper monastery. And it should be noted, with the author of the *Instructiones confess.* nov. (3), that this case of receiving donations from religious contrary to the bull of Clement is reserved to the Pope (although without censure); for Urban established that ordinary confessors should not be able to absolve this case after the publication of his bull; and if the donation exceeded ten scudi, those who receive the donations could not be absolved by the Sacred Penitentiary, unless the donation was first restored; which was also confirmed by Benedict XIV, in the bull *Pastor bonus*, in the year 1744 (4). 9. Many doctors at Salamanca (5) said that the bull of Clement had not been received, or at least had fallen into disuse, and therefore did not obligate. Later, others (who adhere strongly to the Salmanticenses) said the same about the bull of Urban, saying that since this is a declaratory bull of that of Clement, and does not establish a new law, just as the bull of Clement does not obligate today, so neither does this bull of Urban. But this opinion, as the *Instructor confessariorum nov.* rightly points out (6), cannot be sustained. For Urban not only declared and moderated the bull of Clement, but also confirmed and amended it, and condemned all contrary practices introduced up to that time. However, La Croix and Father Mazzotta (7) say that since these bulls were issued to prevent (1) Lib. 4. n. 30. — (2) N. 22. — (3) Part. 2. n. 49g. — (4) Lib. 7. n. 470 ad XI. — (5) Lib. 3. tr. 25. de rest. c. 6. n. 39. — (6) Part. 2. n. 49g. — (7) Croix l. 5. part. 2. n. 809. et Mazzot. de donat. tom. 2. ng. 54. c. 4.

[*Latin ed. p. 312*]

300 TRACT. XIII. ON PARTICULAR PRECEPTS, etc. Ambition and the disposition of goods do not incur the penalties prescribed if two shields are given, because, with respect to the prescribed penalties, such an amount is not considered a serious sum. Nor are moderate feasts and donations

prohibited, for a just cause, e.g., to attract the minds of the brethren to ensure that the monastery is freed from some vexation, or out of mere benevolence, as Croix says. However, the amount that can be given to superiors or subordinates today depends on the approved custom, according to which the aforementioned bullae are received in each order. 10.—Many doubts remain to be discussed regarding this matter. It is doubted 1. what quantity, when spent by a religious without permission, is considered serious? Some say that the same judgment should be applied to the thefts of religious from the monastery as to the thefts of children from their parents. But Sanch. and Lugo rightly reject this, because religious are capable of possessing, but children are not; and also, superiors are more unwilling in the case of thefts by religious than parents are in the case of thefts by children. Furthermore, the doctors commonly say that in order for a theft by a religious from the goods of the monastery to be considered serious, a greater quantity is required than in other thefts. There are various opinions on this: Azorius, Nav. Castrop., Sanch., etc., assign four shields as the amount for a serious matter, and more for richer monasteries; but this opinion seems too lenient. Sotus and Rodriguez assign two shields as the amount for a serious matter, and Croix (1) holds that this is certain. Lugo believes that six carolinns is the amount for a serious matter, and eight for a wealthy monastery, even if the religious takes from the portion assigned to his use; but if he gives to other religious of the monastery, it extends up to five shields, provided that it is not money. Afterwards, Sanch., Bonac., Salm., etc., admit that it is not a serious fault to take food items many times, and in a small matter, even if they later become a serious matter, assuming that the superiors are not seriously unwilling; provided that the loss to the monastery is not great, and that it is not of valuable things (2). But if the matter is serious, is the religious obliged to restore it, if he has nothing else but only the portion of the monastery that has fallen to his use? Some affirm this, but others deny it, as Pelliz de Leone, Fagund., Salmant., etc.; because it is not presumed (as they say) that the superior wants to obligate his subordinate to restore something with such a burden. And this does not seem improbable in the case where that portion is absolutely necessary for the religious for his ordinary needs (3). 11.—It is doubted 2. whether the presumed permission is sufficient to avoid harming the poverty? There is no doubt that tacit, or presumed permission is sufficient, if it were as if the superior had already seen what the religious was spending or taking, and, although he could easily forbid it, he did not forbid it (although, as Tourn. rightly says, this cannot be a general rule): or, as Sanch., Castrop., Pelliz, Salm., etc., say, if in that religion there was some custom of receiving or spending something without permission, and the superior had tolerated it (4); because in such cases, tacit permission is equivalent to express permission. The greater difficulty is whether presumed permission for the future, or ratification, is sufficient, namely, that if the religious requested it,

the superior would certainly assent. Sanch. does not admit this; but Suar., Azor., Nav. Valent., Holzm., Elbel, and others admit it, and not improbably, whenever the presumption is reasonable; because then the subordinate proceeds with the understanding that he has per- (1) Lib. 3. part. ex. n. § 89. — (2) Lib. 4. n. 24. — (3) N. 26. — (4) N. 37 et 18.

[*Latin ed. p. 313*]

ON THE OBLIGATION OF VOWS. 301 depend on the will of the superior, and this ensures that he is freed from the guilt of ownership. And according to this opinion, St. Thomas also says (1), that a religious person cannot make alms "without the license" of the abbot, either expressly given or probably presumed. And that St. Doctor understands "presumption" not of the present, but of the future, which is ratification, he explains elsewhere (2), where he says: "It is not the property of a religious person who gives something, hoping for the ratification of the prelate." However, such dispositions made with presumed license are, for the most part, illicit, at least venially; because superiors, at least in terms of manner, are unwilling, and often even gravely, and especially when they are expressly prohibited by the individual (3).

12. — It is doubted 3. whether a subject, denied a license by an unworthy prelate, is excused from the vow of poverty? It is answered negatively: provided that the danger of damage is not so imminent that the subject has the right to demand a license, because in such a case, at least a license from the superiors is presumed to exist; and in some cases, it may be judged that the vow does not bind; thus, commonly, Castr. Holzm. de Alex. and others with St. Thomas (4), where he says: "But if there is an imminent danger, not admitting of such delay that he can appeal to the superior, then the necessity itself has an attached dispensation; for necessity is not subject to the law (5)."

It is doubted 4. whether a subject can give something to someone with a license, to whom, if the prelate had known, a license would not have been given? If it were presumed that the prelate would revoke the license, he cannot; otherwise, if it were presumed that he would not revoke it, even if he would have denied it at the beginning. In such a doubt, one must appeal to the superior: but in the case where it is difficult to reach the superior, the presumption stands as a license already given; thus, Molin. and de Alex. (6).

It is doubted 5. whether an abbess can make donations (meaning lawful ones) and grant licenses to others to make them? It is answered affirmatively, always provided that they are moderate and reasonable, because abbesses already have the administration of goods. They can also make alms from revenues, and they can also apply them to churches, and expand the buildings of the house, or monastery, and increase the revenues of the house (7).

Which contracts, or donations, can an abbess and her chapter make, see what has been said in the work (8).

13. — It is doubted 6. (and this point is of the greatest importance) whether a religious person having a general license from his superior to spend something at his own discretion, if he spends it on immoral or frivolous uses, does he sin against the vow, and is he bound to restitution, both himself and the one receiving the sum? The first opinion, which we follow, affirms this, and it is the most common, with Castrop. Sanch. Sylvest. Molina, Salmant. Roncaglia, etc.; because the prelate, by giving a license, does not intend to give it for illicit uses; and because, even if he intended, the license would be invalid, since the prelate is not the owner, but a simple administrator of the monastery's goods. On the contrary, the second opinion denies this, as defended by P. de Alex. Rebell. Bord. and others. They say that, since the luxury is unlimited, it includes both lawful and unlawful uses, and that although the prelate is a simple administrator, there is no law that restricts his power to only lawful uses; hence, although his license was illicit, it is not invalid. But the prelate (they add), by giving a license, (1) 2. 2. q. 32. art. 8 ad 1. — (2) In 4. dist. 15. q. 2. art. 5. q. 4. — (3) Lib. 4. n. 18. v. These teach. (4) 3. 2. q. 96. art. 6 in fin. — (5) Lib. 4. n. 35. — (6) N. 34. — (7) N. 36. — (8) Ib. y. can the abbess.

[*Latin ed. p. 314*]

302 TRACT. XIII. ON PARTICULAR PRECEPTS, etc. It is not the case that [the Church] wishes to grant [permission] even for licentious uses, nor to limit it to merely honest ones, but rather it removes the impediment that the subject had, lest he expend such a sum at his own discretion without a license. And although the prelate's license were invalid, they say that at least the restitution of the thing should be presumed to have been remitted by religion, lest the reputation of the subject, or the prelate, or the person who received such a sum, be endangered. But notwithstanding this, I do not know how to depart from the first opinion, because it does not seem to me to be sufficiently proven that a prelate can ever grant this license, whether special or general, for illicit uses; since, concerning the goods of the monastery, he has no power other than that which is granted to him by the sacred canons, or by religion; and this power is not granted to him by the canons, nor by religion, to be exercised in a way that would harm his subjects. As for restitution, Sanch., Molin., and Salm., among others, say that it is sufficient for the one who received the thing to restore it to the religious, provided that he does not use it again for such purposes. But this cannot be reconciled with the bull of Urban, cited above, in which it is prescribed that the restitution be made to the monastery. Furthermore, Castrop., Salm., etc., say that if a woman has received something from a religious because of the shameful use of her body, she is excused from restitution, if, for that reason, the honor of religion or of the religious is

endangered. But this danger seems to me to be very difficult to prove. They also excuse the woman, if it can be presumed that the religious intended to give her the thing, which she ought to restore, because she is poor; provided that the religious uses it for honest purposes. But even this is contrary to the aforementioned bull, in which it is prescribed that the restitution be made to the monastery, and that it cannot be remitted by the community, nor can it be granted to be given to the poor (1). 14.—Doubt 7: Can a prelate grant a religious permission to wager a certain sum in a game? Certainly, if the game is licit, namely, for amusement, and not merely for gambling, and if the sum is moderate, and the religious is not of stricter observance, as we said in tract. 10, no. 220. And as Azor., Less., Mol., and Salmant. say, in this case, the religious can also use a tacit or presumed license. But if the sum is large, or the game is inherently illicit, as we said in the preceding number, the license, whether general or express, is invalid (2). 15.—Concerning the vow of chastity, it is already known that any religious who violates it also sins sacrilegiously; and furthermore, sins against scandal, if, because of his sin, religion were to suffer some detriment to its reputation. For the protection of chastity, enclosure was introduced, not only for nuns, but also for religious, who, according to Clementine Nullus, cannot leave the monastery except for a reason; and with a companion; and with the permission of the prelate, which must be given in each case individually, not generally. And it is commonly said by the doctors of this precept that the transgression is grave, unless it is done once and for all (never at night) and without causing scandal (3). 16.—II. With regard to the vow of obedience, many things must be noted. It must be noted 1. that if the prelate does not express the precept by saying: "I command," "I order," etc., there is not a precise obligation to obey; thus, Salmant. with Suar. and Pelliz. But I add that it is necessary to distinguish the custom of each Institute; for in some, the superiors often say "I ask," "May it please Your Reverence," etc., instead of "I command." Nevertheless, whatever way obedience is imposed, the doctors commonly say (1) Lib. 4. n. 3o and 3t. — (2) N. 3a. — (3) N. 37.

[*Latin ed. p. 315*]

ON THE OBLIGATION OF VOWS. 303 Unless it is stated: "By virtue of holy obedience," or in the name of Jesus Christ, or under the penalty of excommunication incurred by the very act (1)."

2. It should be noted that a superior can command all things that directly or indirectly relate to the rule, or a greater observance thereof; but not those that are contrary to the rule (unless he dispenses with it for a legitimate reason), nor those that exceed the rule, unless he does so to test the obedience of his subjects. He cannot impose obedience to perform certain bodily penances, or other extraordinary burdens (unless as a penance), nor to accept a bishopric, or any other benefice, whether it be a cure of souls or a simple benefice, nor to go forth among infidels with a manifest danger to

life, or to captivity; nor to assist those infected with a plague, unless there is no one present who can administer the sacraments necessary for them. The word "infidels" refers to those who are bound to obey those of their own order; Sanchez, Cajetan, Sporer, and others commonly hold this view (2).

It should be noted here that it is stated in the Council of Trent (Session 25, on Regular Canonries, chapter 4): "It is not permissible for religious to depart from their convents, even under the pretext of going to their superiors; unless they have been sent or called by them."

3. It should be noted that religious do not sin by not observing the original rule, after a contrary custom has been introduced, as Turrecrem, Sanchez, Cajetan, Salmant, and others say. It is doubtful whether religious sin by disobeying a general chapter that commands the first observance? Castres, Laym, Sporer, and others deny this, unless it is the case that, if the religious order were to reform, it would be more harmful to the religious than beneficial. But others, absolutely and more probably, affirm this, as Suarez, Pellican, Salmant, P. de Alexand, and others do (3).

Furthermore, it is certain that a general or provincial chapter can always enact a new statute that is useful to the religious order, provided that it is not contrary to the rule (4).

4. It should be noted that a religious who disobeys a command of a superior commits two sins, as Suarez, Castrop, Pellican, Salmant, and others say: one against the virtue of religion, by reason of the vow; and another against the virtue of obedience promised to the prelate, which is precisely what the vow obligates (5).

5. It should be noted that a subject is bound to obey whenever what is imposed is not a certain sin; so teach all, St. Antoninus, Silvius, Cajetan, Cabass, Tournel, and others, with St. Bernard, St. Bonaventure, and St. Augustine in cap. "Si quod culpatur," Dist. 23, q. 1 (6). It should be noted what is said in part 1, no. 18. And the same should be said regarding the doubt whether the command exceeds the limits of authority, or whether the command is beyond the rule, as Azor, Sanchez, Valent, Salmant, and others say (7).

The same is said in the doubt whether the one who is commanding has legitimate authority; since in such a case, he is found to possess that authority (8). However, it is excepted if the obedience imposed is, on the one hand, excessively burdensome to the subject, and, on the other hand, is probably illicit, or probably exceeds the authority of the superior; or if obedience would bring the subject a grave danger of spiritual or temporal harm; so commonly hold Soto, Lessius, Tournel, Sanchez, Castres, Salmant, Holzmüller, and others (9).

18. It is questioned concerning the vow of obedience, 1. whether a subject is bound to obey a prelate who commands him to reveal a secret entrusted

to him? The answer is, with St. Thomas (10), St. Antoninus, Navar, and others, in the negative, because the command

[*Latin ed. p. 316*]

TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. Natural law prevails over a precept of a superior. However, this principle is different if a prelate, or a monastery, or another innocent party would suffer detriment from the concealment of a secret (1). Whether one may reveal a secret to avoid personal harm is discussed in treatise 11, numbers 9, at the end, and 19.

Question 2: Can a religious person be excused from vows made during their profession, if some circumstance arose that, had it been foreseen, would have certainly prevented them from taking those vows? We have already stated in treatise 5, numbers 23 and 35, that this is probable, as stated by St. Thomas, St. Antoninus, and others, when speaking of simple vows; except for the vows of religion and chastity, as rightly stated by Sanchez, Suarez, Pontius, Castropal, Salmant, etc., against Bonac, who says that one would be excused from those vows if found in grave danger of incontinence; but we have stated that if this reasoning were valid, such vows would almost always be rendered void. However, when speaking of solemn vows made during religious profession, or in the reception of holy orders, no circumstance, even if new and unforeseen, can ever excuse one from them, as all agree unanimously; for the one who makes a profession, or is ordained to the sacred orders, is not considered as a particular person for whom it would be better not to be bound by a vow, but as a member of a community, for whose good the good of the community must take precedence over private good (2). And for the same reason, this applies to vows (even if not solemn) made in some congregations of men or women, especially if a vow or oath of perseverance is added, because then (as we stated in treatise 5, number 19), there is a contract with the congregation that is binding on both parties; therefore, just as the congregation cannot, with the arrival of a new circumstance (understand without the subject's fault), dismiss the subject, so the subject cannot leave the congregation (3).

20. Question 3: Is a license valid that is granted by an inferior prelate, when it has been denied by a superior? The answer is affirmative, as stated by Holzm, Pelliz, and Croix, whenever the superior does not positively prohibit the subject from carrying out the requested matter; for by denying the license alone, it is not understood that the superior intends to invalidate the authority of the inferior. However, if the superior prohibits the inferior from granting a license for something, the cited authors state that the inferior's license is probably valid (although illicit), unless the superior declares it to be null and void (4).

21. Question 4: To whom are nuns bound to obey by force of their vow? The answer is: I, to the Supreme Pontiff; II, to the bishop, unless they are

exempt; but if they are exempt, to the prelate of their order. However, regarding enclosure, even those who are exempt are bound to obey the ordinary of the place, by the bull *Inscrutabilis* of Gregory XV, Clement X, and Clement XII; see what will be said about this in volume 3, treatise 20, on private matters, number 80. Regarding obedience generally owed to the ordinary, it should be noted that nuns are not bound to obey regarding the election of officials of the monastery, as declared by the Holy See. Furthermore, it should be noted that during a visitation, nuns are bound to report those who violate the religious rules, except if those violations have already been corrected, or if the offense is hidden, or known under natural secrecy, or could be hidden without common harm, or if it has already been revealed by others, or if it is foreseen that the revelation would not be beneficial, or would be harmful, and the concealment would not be harmful to the community (5). III. Nuns are bound to obey their abbess in matters pertaining to (1) Book 4, number 49, (2) Number 50, (3) Ibid., see also, (4) Ibid., see also, Question, etc. (5) Number 51.

[*Latin ed. p. 317*]

WHOM IT IS FORBIDDEN TO ENTER RELIGION. 305. Some doctors say that the abbess cannot be commanded by her subjects in matters of obedience, since she does not have spiritual jurisdiction, but only presides over the economic administration of the monastery. However, it is very reasonable for Father de Alex., along with Paschal and many others, to maintain the opposite, since religious women are bound by their vow of obedience to obey all legitimate superiors, and abbesses are recognized by the pontiffs as such in the approval of the rules (1). 22. It should be noted, according to Trident, Session 25, Canon 7, that one who is less than 40 years of age, or who has not lived for 8 years after making their profession in religion, cannot be elected as abbess, and that she must be from among the choir members. It should also be noted that if the religious are in discord, the prelate must set a time, after which has elapsed, he will appoint the abbess, according to the decree of the Holy See. In monasteries that are not exempt, the prelate will be the bishop; in exempt monasteries, it will be the regular superior, who will receive the vows along with the bishop, who alone will assist. After the election, the abbess will not be able to exercise her office until she has received confirmation from the prelate. Other matters of lesser importance can be observed in practice (2). POINT III. WHOM IT IS FORBIDDEN TO ENTER RELIGION. 23. Can sons enter religion, leaving their parents in need? And are professed individuals bound to leave in order to help their parents? 24. Can they enter against the will of their parents? What if they leave their children in need? What if they leave their brothers or sisters? 25. Who prevents someone from entering the religious life? 26. Who neglects their vocation? 27. Can debtors enter? 28. Can bishops? 29. Can pastors? 23. I. THOSE WHO WOULD LEAVE THEIR

PARENTS IN NEED, when they could always help them while remaining in the world, are forbidden to enter religion, unless it is the case that, as St. Thomas says (3), they see that they cannot live without committing a mortal sin, or that it is very difficult for them to do so; and the same is said by Sanch., Castr., Less., Peyrin, Salm., etc. (4). By "danger," Salm. in the next passage understands something imminent. And by "need," it is not understood only extreme need, but also a serious need, as the doctors commonly say, along with St. Thomas, who says to the contrary in the cited passage, that a son is not obligated to remain in the world if his parents can be supported in some way, even if not honorably (5). However, it should be noted that if a son were to abandon his parents in serious need, his profession would not be invalid. Therefore, according to the more probable opinion of St. Antoninus, Cajetan, Sanch., Bonac., Salm., Bord., Busemb., etc., if a son has already made his profession, he is not obligated to leave religion in order to help parents who are in serious need. The reason is that the professed has already chosen his state, just as a son who has taken a wife. And the same Doctor Angelicus teaches this (6), saying: "A professed is considered dead to the world, and therefore he should not leave the cloister on account of the support of his parents." It is said in serious need, because in extreme need, the son would certainly be required to leave (7). 24. Outside the case of necessity, Luther said that it is sinful for sons to enter religion without the consent of their parents. But all the holy Fathers have taught the opposite: St. Jerome, St. Ambrose, St. Augustine, St. John Chrysostom, the Council of Toledo X, the last, St. Thomas, and all Catholics; for it is certain, as the Angelic Doctor says (8), that sons are free in the choice of their state. And although it is improper (as the doctors say) for sons, unless (1) Book 4, n. 52. — (2) n. 59. — (3) Quodlib. 10 ad 9. — (4) Book 4, n. 66. — (5) Ibid. v. Sed. — (6) 2. 2. q. 101. art. 4 ad 4. — (7) n. 67. — (8) 2. 2. q. 104. a. 5. 20

[*Latin ed. p. 318*]

306 TRACT. XIII. ON PARTICULAR PRECEPTS, ETC. Before a son receives his father's blessing, he should not depart; however, this is understood with the condition that no danger exists that would deter the father from his holy purpose. But since such danger is often present, St. Thomas (1) absolutely urges sons not to seek the counsel of relatives when the matter concerns a religious vocation: "Such relatives should be kept away from this counsel," says the Saint, "for in this matter, they are not friends, but enemies." And St. Cyril, quoted by St. Thomas (2), explaining the passage from the Gospel: "No man, having put his hand to the plough, and looking back, is fit for the kingdom of God" (Luke 9. 62), says: "He looks back who seeks delay by conferring with relatives (3)." Parents, likewise, cannot enter religion and abandon their children in grave necessity, or deprive them of a proper education, "for how should they be educated," says St. Thomas

in the passage cited. But this is not understood to apply to emancipated children (4). As for brothers and sisters, they cannot enter religion only if they would be upon extreme necessity; however, if they were in only grave need, the one who has taken the vow of religion cannot, for this reason, postpone it, at least for a long time, without dispensation (5).

25. But before we proceed further, it is fitting here to note that parents who, without a just and certain cause, deter their children from any religious state, whether by evil arts, or by simple prayers, or by promises, cannot be excused from mortal sin: so commonly state St. Antoninus, Navar, Tournely, Abelly, Salm, Conc. Spor. Mazzot, etc. And (as they say), not only parents, but anyone who leads another away from a religious vocation, sins gravely because of the great harm they inflict. Parents, however, sin doubly, against charity and against piety: for they are bound by the office of piety to promote the spiritual progress of their children as much as they can, as rightly observes Bonac. (6).

26. Furthermore, the question is asked whether one who is called to religion sins gravely if he neglects that vocation? Lessius (7) answers that, in itself, he would not sin; for divine counsels do not bind under penalty. However, he adds that one cannot be excused from sin if he believes that he will be damned if he remains in the world; for the words of Lessius are: "If your conscience (which often happens) tells you that you will be abandoned by God unless you obey the divine vocation, and that you will perish if you remain in the world, etc.; then it is a sin not to follow the divine vocation." However, I reason as follows: If anyone who leads another away from a vocation sins gravely because of the harm he inflicts, how can one be free from guilt who knows that he is certainly called by God to religion, and who wants to remain in the world with the danger of his eternal salvation? The learned Habert says that he who chooses a state of life to which he is not called by God, although (absolutely speaking) he may be saved in it, will nevertheless be saved with difficulty; for (as he says) it will be like a member moved from its proper place, which may serve its function with difficulty. Likewise, he who wants to remain in the world, neglecting the divine vocation, will be saved with difficulty, since God will deny him in the world those more abundant helps which He had prepared to offer him in religion, and without these helps he might be saved (absolutely speaking), but he will never be saved. St. Gregory, writing to Emperor Mauritius, commanded (1) Opusc. 17, cap. 9, concl. 2. — (2) 2-2, q. 18, art. 10. — (3) Lib. 4, n. 64. — (4) N. 69. — (5) N. 79. — (6) N. 77. — (7) De stat. vitæ eligend., q. 8, n. 94.

[*Latin ed. p. 319*]

IT IS FORBIDDEN FOR CERTAIN PERSONS TO ENTER RELIGION. 307. Some soldiers, wishing to enter religion, were told by a certain prelate that this law was unjust, because it barred many from paradise: "For many

are there (these are the words of the Saint) who, unless they leave everything, cannot in any way be saved." Therefore, to expose oneself to this danger to eternal salvation, I can never advise anyone to remain free from guilt. Whether this guilt is grave or light, I leave to the judgment of the wise (1). But let us return to where we started. 27.—II. Debtors cannot enter religion, if, by entering, they would no longer be able to repay their debts, but if they remained in the world, they would be able to repay them without great difficulty and in a short time; thus, Azor, Navar, Sanch, Salm, etc. And although it is quite probable that what Saint Thomas teaches (2) is true (and he is followed by Saint Anton, Cajetan, Sylvester, Paludanus, Arminius, etc.), who says that a debtor "is not bound to remain in the world in order to provide for the payment of his debt, saying that it is sufficient if he gives up the goods that he possesses"; because (giving a reason), "the freedom of a free man outweighs all estimation of money." Nevertheless, I believe the first opinion to be more probable, whenever, as has been said, he will be able to repay in a short time, namely within two years, according to Sanch and Navar, and will be able to repay without notable difficulty, because (as the doctors of the first opinion agree), if, by remaining in the world for a short time, a probable danger of falling into mortal sin and losing his vocation threatened the debtor, then he can enter immediately. It is also understood that debts must be certain; for there is no obligation to do so for uncertain debts, as commonly taught by Castrop, Suar, Lugo, Sanch, Salmant, etc. (3). However, it should be noted that Sixtus V in the bull of 1587, and Clement VIII, forbade those who were too heavily burdened with money to enter religion, those who had squandered their possessions, or those who were required to provide accounts, before they had paid their debts or rendered accounts (4). 28.—III. Bishops cannot become religious, for they cannot leave their churches without a just cause, and this is so both because of the vow they make upon receiving them, as Saint Thomas teaches (5), obligating themselves perpetually to serve them; and also because of the spiritual marriage that the bishop contracts with his church; which marriage can only be dissolved by God alone, as is expressed in c. Inter corporalia, de Translat. episc., where Innocent III said: "For the spiritual marriage is not dissolved by human, but rather by divine power." Therefore, Sotto, Sanch, Cajetan, Vasquez, and Salmant (against Suar and Bard) rightly conclude that the exchange of bishoprics is prohibited by divine law; hence, not even the Pope can dispense without a just cause. I say without a just cause; for, as is stated in c. Nisi, the Pope can, for some useful and honest reason, permit a resignation or exchange. Just causes are, as the doctors say, 1. The good of the universal Church, and also of the particular Church (speaking of exchanges), e.g., if there was no one else suitable for the church who could be promoted. II. A defect in the person, if the bishop were infirm, or if his health were detrimental to him, or if he were old, or ignorant, or irregular. III. A defect in the subjects, if

his administration were ineffective for their benefit, or if he was unable to perform his duties, as is fitting. IV. The avoidance of scandal to others; but this does not refer to the scandal of those who would seek to overreach justice (6). 29.—Nevertheless, what has been said about bishops does not apply to parish priests; for these, even against the will of the bishop, can (a) See here, and other books, 4, n. 78. — (2) 2-2, q. 189, a. 6, ad 3. — (3) Book 4, n. 71. — (4) Ibid., 7. Note. — (5) 2-2, q. 189, a. 7, and q. 185, a. 4. — (6) Book 4, n. 74 and 104.

[*Latin ed. p. 320*]

308 TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. to enter, as Urban II declared in chapter 19, question 2, saying: "If any cleric in his church, under the bishop, retains the people (namely, his own people, as the Glossary explains), and lives in a secular manner, if he, moved by the Holy Spirit, wishes to enter a monastery, or a regular canonry, to save himself, even against the bishop's will, he may enter freely by our authority. And, as St. Thomas says (1), a parish priest does not even need the permission of the pontiff to enter religion. This was confirmed by Benedict XIV in his bull *Ex quo dilectus*, in the year 1747. However, the pontiff states there that the parish priest must inform the bishop beforehand; furthermore, he decreed there that the parish is not considered vacant until after the profession; thus, the benefits accruing to it belong to him during the novitiate. The same should be said of other benefices, as Suarès and Sanchez say; but these do not sin (as Benedict adds there), if they omit to inform their bishops, fearing that they might be dissuaded from their purpose. Furthermore, the pontiff declares that just as a regular prelate can recall his subject who has entered a stricter order, so too can a bishop recall a parish priest, or his cleric, from religion, if his departure would cause a serious loss to the original church, etc. But if the church were seriously harmed, he should be recalled. The preceding words are from Innocent IV, the latter from Panormitani, which Benedict uses in his bull, and he concludes: "And thus, sufficient provision has been made for the bishop" (2).

CHAPTER II. ON THE CLERICAL STATE.

30. – Regarding the state of clerics, four principal aspects can be considered: privileges, duties, offices, and benefits with which the Church provides for them, so that they may be sustained. We will speak of privileges in volume III, treatise 20, chapter 2, where the subject of privileges will be discussed. We will discuss duties and offices in Appendix 3, which is located at the end of volume 3. Here, we will only discuss ecclesiastical benefits, which are conferred upon clerics.

POINT I. TO WHOM BENEFITS CAN AND SHOULD BE

CONFERRED.

31. How many kinds of benefits are there?

32. In how many ways are they acquired? On the right of patronage.

33. Are even simple benefits to be conferred upon more worthy individuals?

34. Do patrons have to present more worthy candidates?

35. Regarding prelatures, etc.

36. Is the election of a less worthy candidate valid?

37. Is the elector bound to make restitution?

38. Does a worthy individual sin if he agrees to compete with a more worthy one?

39. Regarding examiners who do not report, etc.

40 and 41. On the plurality of benefits.

31. – An ecclesiastical benefit is defined as: "A perpetual right, established by the authority of the Church, to exercise a spiritual office in a certain church, and to receive, because of it, the fruits from the goods of the church." It is necessary to distinguish between simple and double benefits. Simple benefits are those which are instituted only for the recitation of canonical hours, or for the service of the altar, and are erected by the authority of the Pope or the bishop, such as canonries and chaplaincies, and also pensions, which are granted to clerics so that they may have time for study, and the like. Double benefits are those which have some jurisdiction, such as bishoprics and parish offices, and also deaneries, prebends, archdeaconries, and the like, which have some jurisdiction (1).

[*Latin ed. p. 321*]

TO WHOM CAN BENEFICES BE CONFERRED, etc. 309; they rejoice in the clergy; or some preeminence shines forth, but without jurisdiction, e.g., to reside in a distinguished place in the choir, or in the procession, as are the dignity of the primicerate, the cantorate, or the major sacristan; and these are properly called "personates"; or finally, they have attached to them some ecclesiastical office, such as treasurers, economists, custodians, minor sacristans: and these have some administration, but without jurisdiction, and without any preeminence (1). 32.—A benefice is acquired in three ways: 1. by free collation by the pontiff or bishop; 2. by election or confirmation by a superior, approving the suitability of the elected; 3. by presentation and institution, or by election by a superior, which follows, when the benefice is of patronage. But patronage is of two kinds, one lay, the other ecclesiastical. And in this, it is necessary to know that if a lay patron does not present within four months, the ecclesiastical patron within six, the collation devolves to the prelate to whom the institution pertains, as is stated in c. Quoniam, concerning the law of patronage and canon un. § Verum, ibid. tit.

in 6. (2). And it should be noted that the aforementioned time runs even if a dispute has arisen concerning the presentation; provided that the dispute is not between the patron and the bishop; as Azor, Salm., etc., say from the cited canon. Quoniam. The bishop can postpone the aforementioned term for another six months, but no longer, as Barb. Salm. notes from canon 2. de Concess. præb. (3). If, however, more than one person has been presented by a lay patron, the bishop can choose the one he prefers, because both presentations are valid; but if by an ecclesiastical patron, he must choose the one presented first, from canon. Cum authentice, concerning the law of patronage. But if more than one person has been presented by different patrons, then if the patronage is ecclesiastical, the bishop must prefer the more worthy, as is expressly stated in Trid. sess. 24. cap. 18, where it is said: "The bishop shall choose the more worthy from among the worthy whom the patron presents to him." By the name of patron here is meant the ecclesiastical patron, of whom we are speaking in this place, and it is meant whether it is one, or several who have the right of patronage. And thus they declared the mind of the Council, Sixtus V and the S. C., as Salmant. reports (4), with Garcia, Barbosa, etc. If, however, the patronage is lay, it will be sufficient if the person presented is suitable, as the Council declares there: "But if the right of patronage belongs to the laity, the person presented must be examined, and unless he is found suitable, he shall not be admitted." In this matter, the bishop must then choose the one who has the most votes, as Less., Busemb., and Laym. commonly say, Salmant. with Sanch. (5). And this undoubtedly applies also to curacies, of which the Council speaks clearly in the aforementioned place, whatever Salmant. may say. 33.—But let us come to the point in question, namely, to whom can and should benefices be conferred? For the resolution of this, many doubts must be discussed: 1. whether all benefices should be conferred on the more worthy? Concerning the cardinalate and episcopate, it is certain that the more worthy should be chosen, as is stated in Trid. sess. 24. c. 1. de ref. and from prop. 47 from the decrees of Innocent XI. And the same applies to benefices, curacies, as is stated in the same Council, cited cap. 2 and cap. 18. Greater dignity should be taken from greater ecclesiastical or lay benefit, or from greater utility to the faithful; but all other things being equal, he should be preferred who excels in piety or prudence, the more learned

[*Latin ed. p. 322*]

310 TRACT. XIII. CONCERNING PARTICULAR PRECEPTS, etc. Consideration must be given to the appointment of pastors for parish churches, and to appeals against decisions of the ordinary which are deemed unreasonable, see Bullar. Benedict. XIV., vol. 1, bulla *Cum illud*, 68, dated December 14, 1741. The question is raised whether a bishop sins in appointing a less worthy candidate to a benefice. The opinion of Soto, Navar, Salm,

and others, which is considered probable by Carden, etc., holds that he does not sin (though gravely, since he is not always excused from venial sin) when he appoints a less worthy candidate, arguing that benefices are primarily instituted for the benefit of the community, and that a slight disadvantage is incurred when a less worthy candidate is preferred, but not an unworthy one, but rather one who is worthy, though not the most worthy. Only canonries are excepted, to which an office of penitentiary or instructor is also attached. I do not consider this opinion to be improbable, but I believe the contrary opinion to be certainly more probable, and it is also the more common one, as held by St. Thomas (1), Lessius, Lugio, Castrop, Holzmüller, Croix, Roncaglia, Viva, Salm, etc. The reason is that benefices, as commonly stated by doctors of theology, are not only instituted for the benefit of the Church, but also (though less principally) for the remuneration of merit. Therefore, the bishop sins gravely in conferring benefices upon less worthy candidates, firstly, because he violates distributive justice, considering the right which more worthy candidates have, since the bishop is not a lord, as St. Thomas says, but a simple distributor of benefices; secondly, because he inflicts damage upon his Church, since when more worthy candidates are not preferred, fewer strive to make themselves worthy, and this is not a slight detriment to the common good (2). However, Navar, Soto, Lessius, Lugio, etc., limit this, stating that: 1) if a more worthy candidate was passed over once and again for a simple benefice, and also for a canonry which lacks jurisdiction or an important function; 2) if the benefice is a small one; 3) if someone from the founder's family is chosen, as Tournely says, with Silvius; 4) if the elected candidate intends to renounce the benefice shortly, as Holzmüller says, with Pichler (3). 34. It is asked: 2) Are patrons also obliged to present a more worthy candidate? Regarding curacies, it is certain that ecclesiastical patrons and patrons of bishoprics (who are kings) are obliged to do so, as declared by the Council of Trent, Session 24, chapters 1 and 18. But, with Lugio, Sanchis, Croix, Viva, Roncaglia, Salm, etc., this is also to be held regarding all curacies, since in chapter 1, the Council states that any patron is obliged to present someone worthy for the care of souls. This is confirmed by Innocent XI, decree 47, which speaks of any curacy. However, if the benefice is a simple one, as we have said, it is more probable that bishops are obliged to choose a more worthy candidate; thus, we say this of patrons who are obliged to present them. Lugio alone excepts those who confer chaplaincies, contrary to Azorín, Molina, Vasquez, who allow this only to founders (4). It is asked: 3) Are renunciations also to be made to more worthy candidates? Here there are many different opinions, which can be observed in the work (5); but the opinion of Cardinal Lugo seems most reasonable to me, who says that the reason for mitigating the blame is the damage that such a renunciation would cause to the Church. Therefore, he concludes that renunciations of curacies, and especially of bishoprics, are

rarely permissible, because these are most often made under the burden of a pension, and therefore are not made with a diligent inquiry into merit (6). 35. It is asked: 4) Do religious sin gravely who choose a less worthy candidate for prelatures? Some few deny this, but most commonly and correctly (1) 2-2, question 63, article 2, ad 1. (2) Book 4, number 93. (3) Number 96. (4) Number 97. (5) Number 98. (6) Number 99.

[*Latin ed. p. 323*]

WHO MAY BE APPOINTED, ETC. 311. Lugo, Viva, Croix, Ronc. Salm., and others affirm that prelates and bishops ought to consider the good of the community; and those less worthy are more easily found to be unworthy, because they apply themselves with less diligence to preserving the integrity of the office entrusted to them (1). 36.—It is questioned: 5. Whether the election of a less worthy candidate is valid when a benefice is conferred? Sanch., Castrop., Salm., and others deny this, but Lugo, Fill., Vasq., Holzm., Anacl., Croix, and others affirm it with greater probability. This is proven by a decree of Pope Pius V, in which, although appeal to a more worthy candidate is permitted, it is nevertheless declared that such an appeal does not prevent the execution of the election of a less worthy candidate; therefore, the election is considered valid, and this does not contradict what is stated in the Council of Trent (Session 24, canon 18, de ref.). All provisions made without the aforementioned forms are considered to be clandestine. For by "forms" is not meant the election itself, as the opponents claim, but rather the prescribed rites that must be observed in the conferral of benefices, namely, the publication of an edict, the holding of a competition, and the examination (2). 37.—It is questioned: 6. Whether the one who makes the election is obligated to restore the benefice to a more worthy candidate? Sylvest., Cajet., Bann., Salm., and others affirm this, even for a simple benefice conferred without competition; some say that restitution should be made to the more worthy candidate, while others say that it should be made to the Church. However, it is more commonly held by Canus, Nav., Tol., Less., Sanch., Lugo, Castrop., Croix, that the more worthy candidate is not obligated to make restitution, since he has no strict right to the benefices, which are primarily intended for the public good, and secondarily as a reward for merit, whereas the Church does not intend to obligate electors except to prevent the appointment of the unworthy (in which case, they would certainly be obligated to restore the damage to the Church). I believe this opinion to be more probable, according to what was said in treatise 1, paragraph 20, and in treatise 10, paragraph 73, where it was stated that a possessor in good faith is not obligated to make restitution, whenever he is not certain of his debt (3). Therefore, he who, without fraud, advocates for a bishop to confer a benefice on a less worthy candidate is likewise not obligated, as we said in treatise 10, paragraph 63 (4). But a greater doubt arises: whether, when a benefice is conferred through

competition, the one who makes the election is obligated to compensate the more worthy candidate for the damage? The most common opinion is affirmative, with Sanch., Tourn., Less., Lug., Castrop., Croix, and others, because the more worthy candidate, through the competition, acquires a true right to the benefice, by reason of the agreement that then exists between the elector and the competitors, an agreement which (they say) is sufficiently explained in the edict. Nevertheless, some, such as Sot., Nav., Ledesm., Henriq., and others, excuse the elector not from the sin, but from the restitution, saying that the agreement that is presumed does not create a strict obligation under commutative justice, but rather is a declaration of the obligation that is incumbent upon the bishop according to distributive justice (namely, to prefer the more worthy), which does not obligate to restitution. I am not inclined to consider this second opinion to be probable, but I do not dare to condemn it as improbable; and if there were truly no such agreement, there would be no certain obligation to restore. Furthermore, these same opposing doctors, such as Sanch., Lug., Ronc., and Garc., excuse from all restitution if the excess of dignity was slight (5). 38.—It is questioned: 7. Whether a worthy candidate sins by competing with others whom he considers more worthy? Less., Sot., Azor., Cajet., Vasq., Salm., and others deny this, and indeed, with good reason, for it seems to be the intention of the Church that all (1) Book 4, paragraphs 200 and 101. — (2) Paragraph 103. — (3) Paragraphs 106 and 107. — (4) Paragraph 108. — (5) Paragraph 109.

[*Latin ed. p. 324*]

TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. that worthy individuals should participate, otherwise, if only the most worthy were allowed to participate, few would participate, and perhaps even those worthy individuals, overwhelmed by scruples, would abstain from participating, which would be detrimental to the Church. Conversely, Sanchez, Castrop, Navarr, Lugo, and others, argue that a truly worthy individual would always recognize that another is more worthy, because if he were ever elected, that would be the cause of such an unjust election. Speculatively speaking, this second opinion seems more probable; but in practice, it seems impossible, because in no case can a worthy individual be certain that the bishop does not have some reason, unknown to him, to exclude the person he considers more worthy (1). But here, the question arises whether a worthy individual, if he knows for certain that another is more worthy, would sin if he accepted the benefit, and whether he would be obligated to make restitution for the damage? Navarr and Castrop argue that he would. But Sotus, Sanchez, Turr, Salmant, and others, more plausibly say that he would neither sin nor be obligated to make restitution. He does not sin, because by accepting the benefit, he does not, as the opponents assume, cooperate in an unjust election, since the

bishop, having already offered it to him, has already committed his own sin; therefore, whether he accepts or not, it is an accidental matter. Nor is he obligated to make restitution, because, when a benefit is conferred on a less worthy individual, the conferral is valid (as shown in no. 36); therefore, the benefit no longer belongs to the common good, and the more worthy individual has no further right to it. And this is also the opinion of St. Thomas (2), who, speaking of bishoprics, says that the elector is obligated to prefer the better one; but speaking later of the elected, he says: "However, it is not required that he consider himself better than others, but it is sufficient that he finds nothing in himself that would make it unlawful for him to assume the office of prelate." All the more so, since, as we said a little earlier, no one can be certain that the election was unjust (3).

8. Question: Do examiners sin if they do not inform the bishop who is the most worthy among those examined? Lugo, Castrop, Croix, and others, deny this, saying that they fulfill their duty if they only present to the bishop those whom they consider suitable, since it is the bishop's duty to determine who among them is the most worthy. But it is more probable and common for Azor, Navarr, Ronc, Diana, Salmant, and others, to affirm that, although the judgment belongs solely to the bishop, for this reason the Council has established that the examiners should propose the most worthy individual, so that the bishop may better judge and choose (4). However, the examiners must swear to faithfully perform their duties, as prescribed by the Council of Trent, Session 24, Canon 18, on reform. Otherwise, there is no competition, according to the decree of the Sacred Congregation of Councils of December 2, 1628.

9. Question: Can several benefits ever be conferred on one person? But here, it is first necessary to distinguish between compatible and incompatible benefits. Compatible benefits are all simple benefits that do not require residence. Incompatible benefits, on the other hand, are of two kinds: the first kind includes all duplicate benefits, which are listed in no. 31; namely, first, all curacies, and those that are uniform under the same roof, that is, those that occur in the same place and time in the same functions; also, all dignities, prebends, and ecclesiastical offices, which we have listed there. Incompatible benefits of the second kind are canonries and other benefits that require residence. But before we reach the point, it should be noted that if someone has two incompatible benefits...

(1) Book 4, no. 110.

(2) 2-2, question 185, article 3.

(3) See this, and other passages in book 4, cited above, no. 110, see doubt 2.

(4) No. 111.

[*Latin ed. p. 325*]

WHICH CAN BE HELD, etc. 313 benefices are received; upon the acceptance of the second, the first is, by law, vacated; and if he himself should presume to retain both, by that very act he is deprived of both, as is clear from Trident. sess. 7, c. 4, and sess. 24, c. 17. This is certain concerning incompatible benefices of the first kind: it is doubted whether the same applies to others of the second kind? Some, including Cont. Tourn. Spor. and Salm., (1) with Azor, Gons., Fagn., etc., affirm this, and they prove it from the same Tridentine passages cited, and from a certain decree of the Sacred Congregation. Salm. and others also say the same concerning simple benefices, even though they do not require residence (2). Nevertheless, Laym., Busemb., and others apud Salm. deny this, with Navar., who says that it is not clear from this decree; and they respond to Trident, saying: "The Council, in the latter passage, where it only speaks of vacation, speaks of curates, and not of other benefices" (3). But, as Salm. and Abelly say, the Pope can grant a dispensation, and only in the case of evident necessity, or utility; otherwise (as Bell. Panormit. Tol. Salm. hold), he who would receive more benefices of this kind, even with the Pope's dispensation, would not be safe in his conscience (4). 41.—Furthermore, the plurality of even simple benefices certainly contradicts the canons, provided that the first benefice is sufficient for adequate support, as declared in Trident. sess. 24, c. 17, de ref., where it is stated: "It is commanded that only one benefice be conferred upon each person. If one is not sufficient for support, it is permissible to confer another simple benefice, provided that both do not require personal residence." But a greater doubt remains whether the plurality of even simple benefices is forbidden not only by canon law, but also by divine law. Some absolutely deny this, such as Innoc. Lugo, Filliuc. Valent., etc.; others absolutely affirm it, such as Panormit. and Continuator Tournely, with others, and especially Bellarmine, who holds that the Pope cannot dispense without a very urgent reason: and this both because one person cannot serve two churches, and because this is presumed to have been the will of the founders, that no one should have charge of more than one church. But the common and accepted opinion, with St. Thomas (5), whom Azor, Less., Laym., Abel., Holzm., Salm., etc., follow, says that the plurality of benefices is certainly illicit, even by natural law, so that even with the Pope's dispensation, they cannot be lawfully held, when one is sufficient for support. And not only for the first reason mentioned, but also for a second, and also because the ecclesiastical order would be disturbed by so many confusions, as noted by John XXII in Extrav. Execrabilis, de præb., namely that, if this plurality were admitted, some would be superfluous, and others perhaps more deserving would be forced to beg; also that, if the churches did not have a particular rector, they would easily be defrauded

of their due obedience; also that he who has more benefices cannot watch over the defense of the rights of each church; also, because the abundance of revenues fosters greed and luxury. Nevertheless, it is said with the same opinion that this is not so illicit that the Pope cannot grant a dispensation for just reasons (6). These reasons are: I. necessity, namely, as St. Thomas teaches (7), if there is a need for his service in many churches; II. utility, if the beneficiary can better serve the Church himself, even if absent, with his authority, teaching, and prudence, than another present can, as the same angelic Doctor says in the passage cited: "He himself can serve the Church more," even if absent, than another present; III. the prerogative of merit, namely, of those who benefit the Church with their (1) Tract. 28. de benefic. n. 664. — (2) See our work, l. 4, n. 118, v. Quær. — (3) Lib. 4, n. 116. — (4) Ibid. v. Præterea. — (5) Quodlib. g. a. 15. — (6) Lib. 4, n. 117. — (7) Quodlib. g. a. 15.

[*Latin ed. p. 326*]

TRACTATE XIII. CONCERNING PARTICULAR PRECEPTS, etc. concerning doctrine, instruction, or writing; as it is stated in the chapter on "Multa"; § at the end, concerning prebends: "No one should presume to hold more dignities or offices"; however, concerning sublime and learned individuals, who ought to be honored with greater benefices; etc."

POINT II. CONCERNING THE QUALITIES AND OBLIGATIONS OF BENEFICIARIES, AND IN WHAT WAYS BENEFICES ARE LOST.

42. The qualities of beneficiaries. Concerning the intention of receiving orders within a year, etc.

43. He who receives a parish with a doubtful mind, or conditionally.

44. He who receives a benefice with the intention of abandoning it.

45. The duties of a beneficiary. Concerning the fruits, etc. Whether he may live off of them.

46. To whom he is obligated to give the surplus.

47. Whether to the poor of the place.

48. Whether to his parents.

49. Whether pensioners are obligated to give the surplus.

50. Concerning the residence of canons.

51. The penalties for non-residence.

52. Excusing causes, and I. Infirmity.

53. II. Necessity.

54. Whether an excommunicated person, etc.

55. Whether an irregular person, etc.

56. III. Utility. Concerning one who assists, etc. Concerning the penitentiary and the theologian.

57. Concerning examiners, visitators, etc.

58. In what ways are benefices lost; especially by renunciation, and by law, and precisely if simony is involved.

59. Concerning pensions.

60. What arts and offices are forbidden to clerics.

61. Concerning the alienation of ecclesiastical goods.

62. Concerning the required solemnities.

42. Firstly, concerning the qualities, a beneficiary must be a cleric, at least tonsured. Also, he must not be illegitimate (although the bishop can grant dispensation for lesser orders and for a simple benefice). Also, he must not be irregular, a notorious sinner, or excommunicated. Also, he must possess competent knowledge and the proper age, namely, 14 years of age for a simple benefice (and it suffices to have begun the fourteenth year, according to the common opinion, as stated by S. C. apud Fagnan, in c. Super, de præbend. n. 15); for a benefice that requires the order of subdeacon, 21 years of age; for one that requires the diaconate, 22 years of age; for one that requires the priesthood, 24 years of age; for a curacy, 25 years of age, as is stated in chapter 6 of "Licet de elect." Finally, for a bishopric, 30 years of age are required, as stated in c. Cum in cunctis n. 16, of the same title. It should be noted here that in cathedral churches, for dignities that do not require the priesthood, 22 years of age are required; but this is not required for collegiate churches, as declared by S. C. apud Fagnan, in the aforementioned chapter 7, de Elect. These beneficiaries are obligated to receive holy orders within a year; and if only one hour were desired, the beneficiary could not retain it, unless he had not prescribed it for three years, as Less and Busemb. say (1). Therefore, he who receives a benefice to which holy orders are attached, is obligated to have the intention of receiving them within a year. And if the benefice is a curacy, he who does not have the intention of being ordained to the priesthood, not only gravely sins, as is certain, but is also, by law, deprived of the benefice, so that he is obligated to restore all the fruits received, except if he withdrew this intention within a year from this time, as Less, Nav. Sanch., and Salm. rightly say (against Soto and Tol.), and as is clearly stated in chapter 6 of "Commissa, de elect," where it is said: "Unless his intention has changed, he has been promoted, etc." However, the bishop can grant dispensation for seven years, so that the beneficiary may devote himself to studies, substituting a vicarious benefice in the meantime (2). But this must be understood (as Laym. says), that such a dispensation cannot be granted without a grave (1) Lib. 4, n. 312. — (2) N. 315.

[*Latin ed. p. 327*]

OF THE QUALITIES AND OBLIGATIONS, etc. 315, by necessity, or for the great benefit of the Church, as appears from chapter 6, section 43, concerning elections. Here, the question is raised: 1. Does one gravely sin,

or is one bound to restore the fruits, who receives a benefice with a doubtful mind, or under a condition that prevents the initiation into the priesthood? Three opinions exist. Some absolutely deny it; others affirm that one sins gravely if the mind is doubtful, but deny it if the condition is present; thus, Lessius, Sanchez, Salm, etc., because they say that a conditioned mind is a true mind. But we affirm, with Soto, Azorín, and the Council, that whether the mind is doubtful or conditioned, since the mind is always lacking in the intention of being initiated into the priesthood, there is always fraud, and because of this text cited in chapter Commissa, it obliges to restore the fruits, since it says: "You shall restore the fruits, when you receive them fraudulently." Furthermore, this does not prevent one who, having accepted the benefice with a clear mind, later changes his intention and renounces it (1). 44. It is questioned: 2. Does one gravely sin who receives a benefice simply, if he intends to abandon it later? It is certain (as we have already mentioned) that one gravely sins if the sacred order is attached to the benefice, and he lacks the intention of being initiated; thus, generally, Castrop, Sanchez, Salmanticensis, Busemb, etc. But it remains doubtful whether, if the order is not attached to the benefice, one who receives it with the intention of renouncing it and then marrying sins. Some affirm, Tolet, Lessius, and Salm, believing that this contains a serious disturbance of the natural and divine order. Others, on the contrary, as Castropal and Garcia, excuse him from all guilt. But others, generally, as Sanchez, Navar, Laym, Vasquez, and Busemb, say that one only sins venially, not recognizing in this a disturbance so grave as to reach the mortal level, at least because of a passage from St. Antoninus, quoted from St. Thomas, namely, that nothing is to be condemned as grave unless there is an evident reason for it (2). The words of St. Antoninus cited are in vol. 3, no. 66. 45. Speaking again of the duties of beneficiaries, these are more. They are bound to receive the habit and tonsure, to recite the canonical hours, and to restore the fruits if they omit them. But these matters are discussed in the examination of those to be ordained, in vol. 3, appendix, from no. 49 to 84. Only the obligation to administer the fruits of benefices well, and the obligation to reside, remain to be discussed here. And with regard to the administration of the fruits, it should be noted that 1. it is certain (whatever some authors may say who seem to delight more in rigor than in reason) that a beneficiary can safely live off the fruits, even if he has been provided for with his own goods; thus, generally, Fagnan, Habert, Peter Anaclatus, Holzmüller, and others with St. Thomas (3); since it is fitting that he who serves the altar should live off the altar. For who serves as a soldier at his own charge? But the case of Angelicus should be excepted, in which there is someone poor in great need, or a captive among barbarians, because then the beneficiary, having already more than enough for his own state, is bound to help him (4). However, except for this case, if a cleric lived on his own income, he can freely renounce the goods of the benefice, and freely use as much as

he needs for his expenses, as Lessius, Anaclatus, and others say (5). 46. It should be noted 2. that if the fruits of the benefice remain after the cleric's sustenance, it is also certain that he is bound to give them to the poor, or to apply them to pious uses, as the doctors generally admit, according to the decree of the Council of Trent (x), Lib. 4, no. 114. (2) N. 123. Quer. lib. I. (3) 2. 2. q. 185. a: 7 ad 5. (4) See vol. 5, no. 491. Quer. V. (5) Ibid: no. 461. Quer. I.

[*Latin ed. p. 328*]

316 TRACTATE XII. ON PARTICULAR PRECEPTS, etc. Nothing is prescribed except that they should not squander [the revenues], but rather apply them to pious works. But even in this matter, an exception is made by Lugo and Lessio, as in the case of Kosso, if there are poor people present in grave necessity; for, as Father Viva says, bishops and pastors should inquire about the needs of such poor. (1). However, if there are no such poor people present, as Holzmüller says with St. Thomas (2) and others, the benefits can be reserved to provide for the future needs of the church or the poor (3). 47. — It should be noted that the poor of the locality are not necessarily to be preferred, as the doctors commonly say, while the canons provide for the poor in general. Salm and Holzmüller limit this to cases where poor people are present in the locality in extreme or grave necessity; but this limitation is commonly denied by Molina, Azor, and Bonaventure with Navar, provided (it should be understood) that the revenues are distributed to other poor people who are equally in need; and provided that it is not the will of the founders; and Molina adds, provided that nothing else is required for the common good of the diocese, e.g., if provision must be made for the education of the poor (4). 48. — It should be noted that, under the name of "poor," even those who are joined together are to be included, if they are truly needy to the extent that they cannot live according to their condition, as is expressed in the Tridentine Council, Session 25, Chapter 1. This also applies even if there are poorer poor people present, as commonly stated by Tolet, Molina, and Viva (contrary to Laym.), because the support of relatives belongs to the proper condition of the beneficiaries; therefore, it is universally said with Azor, Castrop, and Croix, that a cleric can freely use the revenues of the benefice to support himself and his family (5). 49. — The question is whether a pensioner is also obliged to give to the poor the revenues of the pension that exceed his needs. Some, such as Sanch, Mol, and Salm, make a distinction according to the nature of the pension, whether it is lay or ecclesiastical (as will be explained in number 59); they deny this if it is a lay pension; but they affirm it if it is an ecclesiastical pension, saying that in that case the pension takes on the same nature and burden as the revenues of the benefice. Nevertheless, the opinion of Lugo, Vasquez, Covar, Azor, etc., is quite probable, which universally denies this; and Azor states that this has been decided by the Roman Rota; the reason

is that, since the pension has already been deducted from the revenues of the benefice, those revenues are already being applied piously, so there is no further obligation to apply them to pious works. The same is said by Mastrius with Bonaventure regarding the commendaries of the Knights of St. John, St. James, etc., to whom Gregory XIII granted the power to testaments; but Azor, Navar, etc., contradict this (6). Whether those who hold benefices are obliged to make restitution if the revenues of the benefice are squandered on frivolous things, see what is said in Tractate 10, number 7, where there was also a discussion of the various peculiums of clerics, and their power to dispose of them. Here, only it should be noted that the matter is more serious in this case than in theft, as the doctors Coninch and Castr commonly say, who require one-third or at least one-quarter of the revenues of the benefice; but Lugo, Croix, etc., reject this, and say that one-twentieth, or one-fiftieth, is sufficient, if that portion amounts to a considerable sum (7). 50. — As for residence, we have already spoken of the residence of bishops and pastors in Tractate 7, numbers 14 and 62. It remains here to speak of the residence of clerics who hold a portion in cathedrals or colleges.

(1) See book 3, number 491, Question 1.

(2) 2-2, question 185, article 7, ad 4.

(3) Book 3, number 491, Question 4.

(4) Ibid, Question 3.

(5) Ibid, Question 2.

(6) Ibid, Question 6.

(7) Book 4, number 283.

[*Latin ed. p. 329*]

OF QUALIFICATION AND OBLIGATION, etc. 317. Those who are canonically instituted, according to Session 44, chapter 12 of the Council of Trent, may be absent for three months; and during this time, they may enjoy the fruits of their benefices, but not the distributions, which (it is worth noting here) cannot be remitted by their colleagues; although, if remission were granted, they would lack these. As the Council states (1). Furthermore, with regard to the fruits of the benefices during those three months, they are not lost, even if the canon is absent without just cause, as Sanch. Pelliz. and others state with good reason, since the Council allows the canon to be absent for such a long time without any limitation. However, it should be noted that, according to the decree of the Sacred Congregation, as cited by Jordan. Pax (2), canons cannot be absent from the diocese during the conciliar months except with the permission of the bishop. And it should also be noted that the bishop cannot combine three months from the previous year with three months from the following year, as declared by Benedict XIV in his bull "Ad Universas" (3); but this

is permissible for canons, provided that (as P. Concina says) there is no scandal and the divine service is not diminished.

51. The Council of Trent, in the same place, stipulates that canons who do not reside for more than three months are to be deprived of half of the fruits in the first year; and if they continue to be absent, they are deprived of all the fruits of that year: "But if they persist in their contumacy," the Council states, "let proceedings be taken against them according to the sacred canons and constitutions," namely, for the deprivation of their benefices. Bon. (4) holds that canons who are absent during the time of their absence are not, by that fact alone, deprived of the aforementioned fruits, stating that the decree of the Council is penal, and therefore requires a judgment. We do not doubt that it is penal with regard to the restitution of half of the fruits of the entire year; but with regard to the fruits corresponding to the time of absence during the conciliar quarter, we say, with Salmant. (5), that they cannot be demanded or retained, since the Council states: "Let him be deprived of half of the fruits, which he has obtained by reason of both the benefice and residence." Therefore, if a canon obtains his fruits by reason of residence, it follows that one who does not reside does not obtain his. And this was explained more clearly by Benedict XIV in a brief (which is attached in the bullarium) addressed to Cardinal Delfino on January 19, 1748, in which he stated that canons who do not sing in the choir in no way obtain the fruits of their benefices, and are therefore subject to restitution. Therefore, if one who does not sing does not acquire fruits, much less does one who does not attend the choir (6).

52. There are three reasons that excuse canons entirely from attending the choir: "infirmity of a reasonable kind, bodily necessity, and evident utility to the Church," as stated in the code of canon law, section 6, concerning canons who do not reside. Therefore, if these reasons are present, canons are not deprived of either fruits or distributions. Therefore, I. infirmity excuses, meaning a serious infirmity, or one that is likely to become serious. The elderly are excused if they cannot attend or participate in the choir without serious inconvenience. However, the blind are required to attend, if they could attend the church without serious inconvenience; and so also the deaf: who are, however, required to make up for the part they do not hear by reciting it (7).

53. II. Bodily necessity excuses; meaning that any serious damage is excused. Therefore, those who take medicine, or who go to baths, or who go to a healthier place, are excused (8).

(1) Lib. 3, n. 675, Dubit. 2.

(2) Jord. Pax, Elucubr., lib. 20, tom. 40, n. 79.

(3) Lib. 4, n. 122, v. Iusper.

(4) Tom. 1, D. 5, de opere benefic. ad resid. pune. 4, n. 16, cum Macigno.

(5) De legib., c. 2, n. 62.

(6) Lib. 3, n. 675, Dubit. 3, et lib. 4, n. 129.

(7) Lib. 4, n. 129, Dubit. 1 et 2, et n. 163, Quor. III.

(8) Lib. 4, n. 120, v. II, Excusat.

[*Latin ed. p. 330*]

318 TRACTATE XIII. ON PARTICULAR PRECEPTS, ETC. 1. If someone has been unjustly excommunicated, or suspended, or if absolution is unjustly denied to him, and therefore he does not attend the choir, he does not lose the fruits or distributions. Note 2. If a church has been polluted or interdicted, canons, even if they do not attend, benefit from both, provided they have not themselves caused the interdict or the violation of the church (1). 54. — It is doubted 1. Whether an excommunicated person, even if he attends the choir, is thereby deprived of distributions and fruits? Some, such as P. Concina, affirm this, but others, such as Sanchez, Bonacina, Castrop, Salm, etc., deny it, not improbably, because although he may sin by attending, and may deserve to be deprived of these things, nowhere is it stipulated that such deprivation is automatically imposed by the very fact of excommunication (2). 55. — It is doubted 2. Whether an irregular canon is deprived of these benefits? But this doubt depends on another, namely, whether the mere granting of a benefice, if done irregularly, is invalid in itself? If the irregularity occurred after the granting of the benefice, it is certain that he is not thereby deprived; therefore, a canon who is irregular and who attends, is not deprived of either the fruits or the distributions. The question then is, whether there is no provision for this case, if the irregularity occurred before the granting of the benefice? Castropal, Roncag., Elbel, and Salm, etc., deny this. But it is more probable that Bonacina, Tournely, Concina, Holzm, and others commonly affirm it. And this is proven 1. From chapter 1 of "De Clericis Pugnantibus in Duello," where it is said that dispensation can be granted to an irregular cleric so that he may receive a benefice; therefore, without dispensation, he is incapable. 2. From the Tridentine Council, Session 22, chapter 4, "De Reformatione," where it is stated: "Let not provision be made except for those who have the age and other qualifications"; otherwise, it is invalid. It should not be said here that we are speaking of qualifications of natural law, but not of positive law, because it is answered that age is certainly of positive law, and therefore "the other qualifications" must be understood as referring to qualifications of both natural and positive law. Therefore, it is more probable, indeed truer, that an irregular person cannot enjoy the fruits of a benefice (3). 56. — The third exception is: The benefit of the church. This is understood to be the case only if it is a serious matter, according to the judgment of the bishop or chapter; it is understood to be the benefit of the church itself, but also of the universal Church, or the diocese, as Concina and Salmant commonly say, with Pelliz., Castropal., Bonacina, etc., against Holzm, who does not admit the benefit of the universal Church; but this

is unfair, because the benefit of the universal Church is more important, and it also contributes to the benefit of the particular church. Therefore, he will not be deprived of either the fruits or the distributions, 1. If the canon resides in Rome, or with a prince, to protect the rights of his benefice (but not his own right to the benefice), or if he is sent by the chapter for the business of the church, or if he is sent by the bishop in his name to visit the apostolic court; or if the bishop takes him with him (since he can also take two with him) on such a visit; or if he has been elected as a vicarious of the chapter, but not if he has been created a vicarious by the bishop, in which case he will enjoy the fruits, but not the distributions (4). 2. If the canon is a penitentiary, and if he himself receives confessions while the office is being recited, as stated in the Tridentine Council, Session 24, chapter 8, or if he waits in the confessional for those who wish to confess, as say Castrop, Bonacina, Salmant, Concina, Roncag., Salmant, etc., with the declaration of the Sacred Congregation. And P. Concina probably says the same about a canon who is substituted for the penitentiary, or about another who has been sent by the bishop at that time to assist him. The same is said about a canon who is a curate while performing his ministry, by Castr. and Conc., who admit this (x) Lib. 4, n. 30, v. Quando. — (2) Ibid., v. cum autem. — (3) N. 130, v. Quæritur autem. — (4) Ibid., v. III. Excusat.

[*Latin ed. p. 331*]

ON THE QUALITIES AND OBLIGATIONS, etc. 319 (contrary to Bonacina), although the church whose care he has may be different, it is the diocese itself. 3. A canon, during his term of office, either teaches or is excused from teaching (1). 57. — The fruits, but not the distributions (unless there is another custom, as Pichler and Concina say), are enjoyed by: 1. the canon examiners examining while the office is recited; 2. the visitors of the diocese; 3. the two canons whom the bishop can assign; 4. the canons who teach in schools (or students with the bishop's permission for five years of theology), as is stated in chapter, at the end, concerning teachers. This also generally applies to doctors, as declared by the Sacred Congregation. Castres, Roncaglia, and Salamanca extend this even to grammar, logic, and philosophy. This also applies to parish priests who teach, but not to those who are students, as the same authors say (2). 58. — Finally, it should be noted that benefices are lost in four ways: 1. by the death of the beneficiary; 2. by a judge's sentence; 3. by resignation; 4. by the disposition of the law. But regarding these latter methods, more must be noted. And 1. Regarding resignation or renunciation of a benefice, it is necessary to distinguish between several kinds of renunciations that are found. Some are called express, others tacit, e.g., due to a religious profession, or the like. Some are pure, without any agreement or condition; others are conditional, namely, made in favor of someone. And these can be either simple or qualified, namely, with a pension, or with an agreement

to receive the benefice again, which is called the right of return. For this conditional resignation to be valid, many things are required: 1. that the benefice has already been acquired by the one resigning; 2. that it is done freely, not under duress; 3. that it is done in the hands of the Pope; 4. that it is accepted by the Pope, or by someone who can admit it; and if the resignation is pure, it must be completely accepted at least by the grantor, as is stated in the chapter on Renunciations (3); 5. that it is accepted by the recipient; 6. that the patrons consent; 7. that it is done with the clause, "Otherwise, etc."; 8. that if the one resigning is infirm, at least after the resignation is completed, he must survive for 20 days; 9. that the resignation is published in the Roman curia (4). What is said about resignation also applies to the exchange of benefices. II. Regarding the last, which is the disposition of the law, benefices are lost by this very fact due to marriage, due to religious profession, due to the acceptance of another incompatible benefice, as was said in n. 40. Also, benefices are lost due to the crime of simony, and especially due to simony committed by synodal examiners in curacies, who, if they receive anything in consideration of the examination, are both ineligible to receive benefices in the future, and are ipso facto deprived of all benefices they already held, and this before any sentence, as is stated in Tridentine Session 22, chapter 18, where the Council says that they cannot be absolved from this simony unless they are deprived of their benefices. The loss of benefices, even those previously held, also occurs due to a simoniacal collation of any benefice. But here, many species of simony must be distinguished: mental, conventional, real, and confidential. Mental simony is when someone gives a temporal good with the intention of obligating someone to perform a spiritual act; or conversely, but without any agreement intervening. Conventional simony is when there is an agreement, but without execution on either side (1) Lib. 4, n. 151. v. Sic pariter, — (2) N. 151. v. Sentiunt et 152. — (3) See these and other things in Lib. 3, n. 133 and seqq. — (4) N. 112.

[*Latin ed. p. 332*]

TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. A mandate is imposed, but neither of these is subject to any penalty. However, in the case of a real mandate, once the agreement is fulfilled, the following penalties are imposed: according to the bull *Cum primum* of Pope Pius V, dated 1566, in addition to papal excommunication imposed by the very act, the penalty of nullity of the benefit is imposed (so that, according to *Extravagantes Pii IV*, *In sublimi*, dated May 5, 1662, a simoniac, if he does not renounce the benefit, cannot be absolved), and there is also the penalty of deprivation of benefits previously obtained, and the inability to obtain other benefits in the future. But, according to a more probable and common opinion, as stated by Navar, Suarez, Sanchez, Laym, Anacleto, Roncaglia, and Croix, these penalties are not incurred unless the simony is perfected by both

parties, and this is the opinion of the Curia, as testified by Navar and others (1). And although the simony is complete, the aforementioned penalties of deprivation and inability are not incurred unless after a condemnatory sentence, as commonly stated by Bonatti, Castrop, Sanchez, Laym, Filliuc, Salm, etc. (2); for in no law is this penalty found by the very act. Nor does the bull of Pope Pius V contradict this, because (as these doctors say) it is understood to have its force only in the external forum, when it says that whoever is convicted, at least in that sense, is only received. Finally, confidential simony occurs when someone renounces a benefit to another with a pact, so that he may later retract, or renounce it to himself, or to another, or with the obligation to provide a portion of the fruits. The same penalties are imposed for this confidential simony, and in addition, according to another bull of the same Pope Pius V, *Intolerabilis*, § 3, it is sufficient that the simony is complete by one of the parties (3). However, with regard to the deprivation of benefits that have already been obtained, and the inability to obtain them in the future, which are expressly stated in the aforementioned bull *Cum primum*, at least a declaratory sentence of the crime is required, as probably stated by Cajetan, Lessius, Sanchez, Castrop, Sporer, Moller, Salm, etc., against Vasquez, Bonatti, etc. (4). Note also what is said in tractate 4, numbers 51 and 52, and 59. It is appropriate to note something about the pension mentioned in the preceding numbers. A pension is the right to demand a portion from another's benefice. It is threefold: temporal, spiritual, and mixed. A temporal, or local, pension is that given to laymen, or clerics, for some temporal service, e.g., a procurator, advocate, singer, etc. A spiritual, or ecclesiastical, pension is that given for some spiritual title; e.g., a preacher, coadjutor, parish priest, etc. A mixed pension is that which is not given for some spiritual service, but is based on some spiritual title, such as that given to support the parish clergy, a poor cleric (5). Note 1: It must be designated by the Pope, howsoever the pension is levied on the benefice. Whether a bishop can assign a pension, in certain necessary cases, e.g., to settle disputes, or to equalize the exchange of benefices, or to assist (as mentioned) the poverty of some cleric, some admit, e.g., Busembacher, from *c. 21, de Præb. cap. 3. de Coll. et cap. Aquæductus, de Rer. permut...* But Lessius and Salm deny this, saying that it is reserved to the Pope, according to the style of the Roman Curia, which makes law (6). Note 2: The pension must be moderate, so that it does not exceed one-third of the revenue of the benefice (7). Note 3: When the benefice is of patronage, it is required (as mentioned in number (1) Book 3, number 106, see Question I; (2) number 112, see Question III; (3) number 106, Question I; (4) number 112, Question III; (5) Book 4, number 157; (6) see these and other things in Book 3, number 74 and following; (7) Book 4,

number 138, ad II.

[*Latin ed. p. 333*]

ON THE QUALITIES AND OBLIGATIONS, etc. 321 preceding. 9. The consent of the patron is required for the resignation of a benefice, when it is conditional; otherwise, for a pension: thus say Lessius, Busemb, and others (1). Note 4. That a pensioner, if he receives a pension as a cleric (and not as a layman), is bound by the bull of Pope Pius V to recite the Office of the Blessed Virgin, and if he omits it, he does not earn his fruits. However, those who recite the greater Office are excused from this obligation; and knights of military orders fulfill other prayers prescribed by religion, as is common among all doctors (2). 60.—Note also (speaking of clerics in general) 1. That it is forbidden for clerics to practice base trades, such as that of an innkeeper, a laundress, or a showman. It is also forbidden to practice surgery in cases where an incision or cauterization is necessary, provided that a suitable person is not lacking (3). However, this prohibition applies only to clerics in the Sacred Orders, as stated in chapter *Sententia*, *Ne clerici, etc.*, but not to those holding benefices, as rightly say Bon., Mol., Tournely, Pontas, etc. (4), 2. Those ordained in the Sacred Orders, and those holding benefices, are forbidden from acting as judges in criminal cases, and also in civil cases in secular courts; chapter *Sed nec*. 4. Nor clerics, monks, and advocates in secular courts; chapter *Multa*. 1. in the same title, and chapter *Cler.* de post. where it is forbidden to altar ministers, those holding benefices, and monks, "to argue in secular matters, except in the defense of orphans, or widows," as is said in the aforementioned chapter *Multa*. And it is also excepted if they were to defend a particular cause or that of relatives within the fourth degree, who could not find a defender. Clerics in Minor Orders, however, may lawfully handle civil cases in any court, and may also defend the accused in criminal cases (5). And monks are also permitted, with the permission of the monastery's superior, to defend causes; chapter *Ex parte*, de Postul. 3. It is forbidden for clerics to cohabit with women, unless they are a mother, sister, or aunt, or such that no danger or suspicion of scandal could arise: and also to carry weapons (unless they are on a journey), as says Busemb. (6); to engage in noisy hunting (observe that it is said in the aforementioned treatise, 10, no. 72); and to engage in business (see in the aforementioned treatise, no. 192 and following) (61).—Finally, it should be noted that it is forbidden for clerics and religious to alienate, without the consent of the Holy See, ecclesiastical property of any kind, as stated in the *Extravagantes* *Ambitiosæ* concerning ecclesiastical property not to be alienated. Under the name of alienation are included exchanges, pledges, transactions, where part of the property is returned. Under the name of ecclesiastical property are included endowments, the names of debtors, annual revenues, rights, and servitudes in alien property, flocks and herds, fruit trees, and large

sums given to purchase endowments; also included are valuable movable property that can be preserved, such as libraries, gems, gold or silver vessels. Under the name of the *locus pii* is understood any place erected by the authority of the bishop, such as seminaries, hospitals, and confraternities. However, if there is a fund donated to the Church with the faculty to be alienated at the discretion of the administrator, it can be alienated from it without the consent of the Holy See, as Armill., Bonac., Cov., Croix, etc. rightly say; for then the faculty is held by the owner of the property (7). (1) Book 3, no. 75, and Book 4, no. 153 ad III. (2) Book 3, no. 74, v. *Sed notand*, and Book 4, no. 353 ad IV. (3) Book 4, no. 189, and Book 7, no. 284 ad V. (4) Book 7, no. 385. (5) Book 4, no. 150 and 219. (6) No. 291. (7) After no. 187, de alienat. bon. eccl. 21.

[*Latin ed. p. 334*]

322 TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. 62. – The following formalities are required for the alienation of ecclesiastical property: 1. Common consultation; 2. The consent of the bishop, or the chapter, or the clergy, or the regular superior, and also of the lord, if the property of a benefice is being alienated; 3. The signatures of those who consent; 4. The approval of the Pope, or the Sacred Congregation, according to the decree of Urban VIII dated September 7, 1624; but if the sum requested is small, as defined in canon 12, question 2 of the *Terrulas*, it is granted to the bishop to allow the alienation. There is doubt, however, as to what price is considered "small": some say it is a sum less than one hundred ducats, but Delbene, with the common opinion (as La Croix says), and as deduced from the gloss on the aforementioned text, says it is a sum not exceeding 25 Eichstätt shields, which are worth 40 Roman shields. However, Fagnan, in chapter "Nulli," on ecclesiastical property, etc., number 26, states that there is nothing certain about this, but that the sum should be left to the discretion of the judge. And many say that in a case of necessity, or evident utility, the bishop can grant permission for any alienation (1); but this must be understood with the proviso that there is not enough time for the Sacred Congregation to be consulted. But are alienations made without formalities, but for a just cause, not only illicit, but also invalid? Many deny this; but others, more plausibly with Fagnan, especially if the approval of the Pope is lacking. La Croix, with many others, says that if there has been a prescription of 40 or at least 30 years, it is presumed that the papal approval has been present (2). It should be noted that the lease of ecclesiastical lands, which yield income each year, cannot be for more than three years: however, the beneficiary, as is commonly said, can lease the property of the benefice during his lifetime (3). CHAPTER III. ON THE STATUS AND OFFICES OF CERTAIN SECULAR PERSONS. POINT I. ON JUDGES AND SCRIBES. 63 and 64. Concerning judges. When can a judge condemn, or investigate, or reduce a penalty? And can he judge based on

private knowledge? – 65. And can he judge with a less probable opinion? – 66. Can he share a stipend with a commissary? And can he accept gifts? – 67. Can he retain the price of an unjust sentence? – 68. Concerning scribes. 63. – In this section, we omit many things that pertain to the forum; we will only note here those that concern conscience and some of the most important legal matters. 64. – And I. concerning judges, it should be noted 1. that a judge cannot condemn a defendant if there is no accuser; except in the case of treason, or heresy, or if the defendant has confessed in court before two witnesses, or if the crime is notorious, or if public opinion is such that there are sufficient indications known to the majority of the region, or neighborhood. However, to proceed with an investigation without public notoriety, and sometimes even to a sentence, sufficient is still half-proof, such as a single, trustworthy witness (4). It should be noted 2. that an inferior judge cannot reduce a penalty without some urgent cause, as the superior judge can, whenever there is a just cause (5). It should be noted 3. that if a judge knows from private information that someone is guilty, who legally appears to be innocent, he cannot condemn him, according to the common opinion (4) Book 4, number 187, Note VI. → (a) Ibid. v. Si autem. → (5) Ibid. Note VII. → (4) Numbers 199 and 200. → (6) Number 203.

[*Latin ed. p. 335*]

OF JUDGES AND CLERKS. 323. The opinion of St. Thomas is to be noted, (1) who holds that, since the judge is a public official, he must proceed according to what is alleged and proven, that is, according to the public knowledge that exists regarding the case. Conversely, Sanch., Salm., and others, along with Angelicus, argue that if someone is proven to be guilty, but the judge knows him to be innocent, the judge is obligated to condemn him. Nevertheless, this latter opinion is strongly denied by Sylvest. Lessius, Nav. Tol., Bonac., Holzm., Anacl., etc., because it seems intrinsically evil to condemn an innocent person; it would be as if a judge were to obligate a woman to cohabit with someone. However, in pecuniary matters and in civil cases, the judge must undoubtedly judge according to what has been proven; Less., Lug., Bonac., Laym., etc., maintain this. For the public good, which is served when judgment is rendered according to public knowledge, can certainly transfer ownership of property (2). 65. It is important to note the fourth proposition condemned by Innocent XI, which stated: "It is probable that a judge can judge according to a less probable opinion." This was rightly condemned, because the judge is obligated to distribute justice to everyone, and the party that presents the more probable reasons certainly has a greater claim to justice. However, when a case has equal probability on both sides, if it is a civil case, the property must be divided, unless the case involves a minor, a widow, an orphan, or marriage, in which cases these parties must be favored. If, however, the case is criminal, the defendant must always be favored, since there are probable reasons in his

defense (3). It is doubtful whether, in civil cases, the defendant should be favored over the one possessing the property. It is certain that (1) the possessor must be favored if the reasons are equal: this is the common opinion of Soto, Sylvest. Molin., and Sanch., along with many others, based on rule 65 of the *Regulae Juris*, which states: "In equal fault, or cause, the condition of the possessor is superior." It is also certain that (2) in cases of doubt regarding either ownership or possession, a judgment must be rendered in favor of the one who has the more probable reasons, as appears from the proposition condemned above. And when the reasons are equally probable, the judge must then divide the property, as has been said, and he cannot accept anything from either party in order to render a judgment in their favor, according to another proposition, 26, condemned by Alexander VII (4). However, it is debated whether, if the plaintiff has more probable reasons, judgment should be rendered in his favor. In this case, Tamburin says that judgment should be rendered in favor of the plaintiff; but, most commonly, Carden., Holzm., Elbel, Bonacin., Filg., Croix, and some modern scholars assert that this is the common opinion, because (as has been said many times, especially in treatise 1, number 20) legitimate possession gives a certain right to retain the property, as long as it is not certain that it does not belong to the possessor; and then, by favoring the possessor, the judge does not merely judge according to the more probable opinion, but according to the most probable opinion, based on another rule of law (rule 2 of the *Juris*), which states: "When the rights of the parties are obscure (as is the case here, when there is no certainty on the part of the plaintiff), the defendant should be favored rather than the plaintiff (5)." 66. It should be noted that (5) a judge cannot share a fee with a clerk that is due to the clerk, because it is the judge's duty to choose the clerk (6). It should be noted that (6) a judge cannot accept gifts from the parties; and this is certainly true if the gifts are valuable, as defined by law (1) 2. a. q. 67. a. 2. — (2) Lib. 4. n. 208. — (3) N. 210. Quær. I. — (4) N. 216. v. Sed hinc autem lic. — (5) N. 220. Quær. II. — (6) N. 217. v. Certum.

[*Latin ed. p. 336*]

324 TRACTATE XIII. CONCERNING PARTICULAR PRECEPTS, etc. FEES. But it is doubted 1. whether a judge can accept food and drink, which are called gifts? Many agree with Azor, Cajetan, Silvestri, Anglerius, and Menochius, as cited by Salmeron (1), from the book *Solet*, § "It is not so," from the titles *De Officiis Praetorum* and chapter *Statutum*, § "Furthermore, from the Rescript in 6," where it is permitted to receive food spontaneously offered, provided that (as the gloss adds) it is neither sought directly nor indirectly. But Salmeron, number 80, Sotellus, Navarrius, and others deny this; for with regard to the book *Solet*, it was corrected in the Authentic § *Scriptum* and § *Jusjurandum*. And with regard to the canonical text, they say that it only applies to judges

delegated by the Apostolic See, and not to others. But this distinction does not seem convincing to me: for we do not know why these, and not other judges, can do this. And the reason given in the text by the gloss for the first opinion should not be disregarded: as the gloss says, "It is not simony, if a regular prelate freely receives something from one who desires to enter religion, as is stated in chapter *Delicta*, 30, concerning simony, at the end, where it is said: 'But it can be freely received, if it has been offered freely, without any condition (that is, of the superior).' " Because it is not presumed that a prelate, for a gift freely offered, will sell admission to religion; so, likewise, it is not presumed that a judge will render an unjust judgment for a small gift. We have rejected this opinion in our work (2); but having considered it more carefully here, we do not know how to reject it; at least, as Lugo says (3), a custom should not be rejected where it is found to be legitimately established. It is not doubted that bishops, during their visitation of the diocese, can receive moderate expenses for their sustenance, as is stated in c. *Romana*, § *Procuratores*, concerning censuses, in 6, 67. It is doubted 2. whether a judge, having rendered an unjust judgment, is bound, before a condemnation is pronounced against him, to restore what he received for rendering such a judgment? Some probably affirm this, as Sotellus says, § *Medina*, etc.; but others, as Lessius, with St. Antoninus, Navarrius, and Lugo, with Molinos, Vasquez, and Rebellino, (4) (and Salmeron calls this opinion equally probable), also probably deny this, because, according to natural law, if a bad act has been performed, the price received is justly due; as was said in tractate 10, number 123. The opponents object the laws 26 *De Verbis Obligantis* and 6 *De Pactis*, where it is said: "Pacts contrary to the laws, or to good morals, have no force." Also, they object c. *Statutum*, § *Si quid*, from the Rescript in 6, where restitution is imposed, and it cannot be remitted. But Lessius replies that although the laws render such agreements invalid, so that they do not create any obligation before a wicked act is performed, yet, if the act has been performed, these agreements, although they remove the action of bringing a lawsuit in court, do not remove (at least expressly) the natural obligation, nor do they invalidate the price acquired. And even if there were a law requiring restitution before a condemning judgment, at least a declaratory judgment would be required, as was said in tractate 2, number 25 (5). 68. II. Concerning scribes, meaning those who examine witnesses, and describe judicial proceedings, and show authentic copies to the parties; these sin if they add to or diminish depositions, or if they omit to examine a witness who has already been presented; if they conceal a document presented, or refuse to show a copy; if, with a document presented, they substitute a false one in its place. They also sin if they demand a fee beyond the established rate. Lugo, Turrianus, Salmeron, and Coreglia (2) say this. (2) Salmeron, tractate 29, chapter 1, number 94. (3) Book 4, number 211. (3) Dispensation 37, number 137, v. Quarta. (4)

Lessius, book n. eup. 14, number 55. Lugo, dispensation 37, number 134. (5) Book 4, number 216.

[*Latin ed. p. 337*]

OF ADVOCATES AND PROCURATORS. 325. With Moller and Daniel, write today that you should not sin if they demand more than the ancient fees, because today the prices of things have increased, and therefore that salary is no longer sufficient to support life, which was sufficient formerly (1); and if the ancient fee is unjust today, Coreglia, with Sanchez and Machado, says that one should not even take an oath to observe the fee. Furthermore, it is generally said that a scribe cannot receive anything from the parties beyond a just price, even as a donation, because such gifts are never spontaneous, Navar, Rodriguez, Salm., etc. However, if he performed some extraordinary labor, then he can receive something more. But can a commissary, having sent several procurators to execute, demand the full daily salary from each debtor? Lugo and Lessius (2) affirm this, citing the example of a scrivener who, being sent to deliver letters, can demand a similar salary from others who give him the letters to deliver, as mentioned in tractate 10, paragraph 209. But Sanchez, Tamburrini, Daniel, and Salm., etc., deny this, saying that the daily salary is not given to the commissary for the number of executions, but for his work each day, unless the number of executions involved extraordinary labor (3). However, it is necessary to distinguish here, because Sanchez and Salmant speak when a fixed price has been agreed upon for the commissary's occupation each day; and then, certainly (as Lugo concedes), he cannot demand more from him. But when the commissions are different, and a special salary has been assigned for each procuration, then Lugo rightly says that the commissary can demand several salaries for the quality of the executions; and this is also what Lessius believes.

POINT II. OF ADVOCATES AND PROCURATORS. 69. Whether monks and clerics can act as advocates. And when is an advocate bound to defend? — 70. What causes can he defend, and at what salary, etc.? — 71. If the cause is just, etc. If an agreement is made about the salary in the prosecution of the lawsuit, or if a pact is made about a share of the lawsuit. — 72. About procurators, if they have an advocate for free. If they offer themselves, etc. 69. Firstly, concerning advocates, it should be noted that 1. monks and clerics are forbidden to defend other lawsuits, except their own, or those of their relatives, or the poor (see what was said in paragraph 60). It should be noted 2. that in criminal cases, an advocate can defend even guilty defendants, because the accused can always lawfully take steps to avoid his punishment, as long as he is not condemned, or at least convicted; but in doubtful criminal cases, an advocate cannot defend the accusers (4). It should be noted 3. that an advocate is bound to defend one who is in extreme necessity, even at his own grave (but not very grave) inconvenience,

when no other remedy appears; Sanchez, Castrop, Salmant, and others, generally with St. Thomas (5). In very grave necessities, he is also bound to defend the poor, but not at a very grave inconvenience; it is understood that he always has something superfluous to his condition. In common necessities, it is sufficient to give them something from his superfluities (6). 70. — It should be noted 4. that an advocate can certainly defend causes that are equally probable, whether of accusers or defendants; and in the case of defendants, he can even defend less probable causes. It is doubtful whether he can defend the causes of accusers, which he himself sees to be less probable. Some deny this, but (1) Book 4, paragraph 231. — (2) Lugo de Inst. D. 37, paragraph 138. Lessius, book a, chapter 24, paragraph 28. — (3) Book 4, paragraph 217. — (4) Paragraph 222. — (5) 2-2, question 74, article 2. — (6) Book 4, paragraph 221.

[*Latin ed. p. 338*]

TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. Lugo, Azor, Sanch, Bus, and others assert that it is more probable to affirm something with a common argument; because that argument which, at the time, seems less probable to the advocate, may appear to the judge, and indeed may later become, more probable. However, the advocate is still bound to inform his client of the lesser probability of his case (1). Note 5: If an agreement is reached regarding the price of a salary, and the client abandons the case, the advocate can rightfully demand the full salary, as correctly stated by Salamanca with Sayro, according to what we said in Tractate 7, number 7, concerning point 4. However, this is understood only if there is no just cause for interrupting the case (2). Note 6: If the advocate agrees with the client by a contract regarding an annual salary for all of his cases, he can demand this, even if no cases arise; for if more cases should later arise, he cannot demand a higher fee, unless extraordinary labor is required. However, if the advocate becomes ill for a prolonged period while the cases are being litigated, he is obligated to remit the salary for that time (3). 71. An advocate sins 1. if he defends or prosecutes a case that is certainly unjust in terms of ownership, even if it is just in terms of possession; because just as the accused cannot retain the property at that time, so neither can he defend him. If, however, the case is unjust, the advocate is obligated to restore damages both to the opposing party and to his own client, if the latter was unaware of the injustice. Therefore, before undertaking the burden of defending a case, he is obligated to diligently examine the merits of the case and to inform the client about its status and quality (4). He sins 2. if he negotiates a price during the litigation, as stated in chapter Infames, 3, question 7. He should make an agreement about the salary, either before or after, because if he agrees during the litigation, the client can easily be pressured to agree to a price that greatly exceeds what is fair. However, if the salary is certainly just, Salamanca with Navar do not condemn this (5).

The advocate sins even more if he agrees to a percentage of the winnings, e.g., one-third or one-quarter, if the case is won, according to the law Sumptus, sections on pactis, and the law Litem, chapter da Proc. For then there is a danger of striving with all one's might to win the case, by fair means or by foul means. But if the price is certainly just, they do not condemn him for having to restore it. Lugo, Navar, Laym, Filliuc, and Sanch with Henriq say that, according to the agreement, the client is not obligated to pay the price that was agreed upon, because such an agreement is disapproved by the laws; but therefore, the advocate is not obligated to restore what he received (6). He sins 3. if he takes on more cases than he can reasonably handle, unless he informs the client about this. He sins 4. if he reveals to the opposing party secrets of the party he is defending; unless (some limit it) if this were not done, the opposing party would suffer an unjust and serious loss; but others do not accept this limitation with St. Thomas (7). He sins 5. if he uses tricks or delays that are not related to the matter at hand. However, Sanch (8) with Sylv, Armil, Cov, Tap say that, if his case is manifestly just, and he does not produce any falsehood, he can use tricks (or, to speak more properly, well-intentioned delays) to counter the unjust tricks of the adversary; he also cites St. Thomas (9), who says: "It is permissible for an advocate to prudently conceal things that could impede his case." But if the case is not manifestly just, I do not see how I could permit delays that are not related to the matter at hand, which some use indifferently (they call them "Gubernationem").

(1) Lib. 4. n. 222.

(2) N. 323. v. Note 2.

(3) Ibid. v. Note III.

(4) N. 223.

(5) N. 224.

(6) Ibid. v. Nee licet.

(7) 2. 2. q. 71. art. 3. ad 2.

(8) Sanch. cons. 1. 6. c. 7. d. 8. n. 2.

(9) Cit. art. 3. ad 3.

[*Latin ed. p. 339*]

OF THE ACCUSER, THE WITNESSES, AND THE ACCUSED. 327

causes), unless in the single case where there is a reasonable fear of an unjust judgment, because some judge is present who is strongly influenced by human considerations in favor of the opposing party. 72. — II. Regarding advocates, it should be noted that 1. if an advocate has an attorney or scribe who provides their services gratuitously solely for that advocate, then the advocate may demand payment from them; otherwise, if they are paid by the client. It should be noted 2. that if an advocate substitutes another advocate, then he may share the fee with him,

provided that he informs him of what is to be done, and assumes the risk of the case, in the case where the cause fails due to the negligence of the other. It should be noted 3. that some say that an advocate cannot receive a fee if he spontaneously offers to attend the cause, especially when the client is a cleric or a layperson. But I do not know how to absolve the client from all obligation to provide satisfaction, unless it is established that the advocate intended to remit all his labor, and that he himself accepted that donation; otherwise, the advocate always has the right to the compensation he deserves (1). PARAGRAPH III. OF THE ACCUSER, THE WITNESSES, AND THE ACCUSED. 73. Concerning accusers. When should an accusation or denunciation be made? Regarding guards, etc. — 74. When can clerics accuse? And should correction precede it? Especially if one lives in a community. — 75. Concerning warnings. — 76. Concerning denunciations of heretics. — 77. Concerning heretical blasphemies. — 78. Concerning superstitions. — 79. Concerning witnesses. When are they obligated, etc. — 80. He who omits to say the truth. — 81. He who conceals the truth. — 82. Concerning the accused. The accused, when is he obligated to confess? — 83. Whether this is the case when the penalty is severe. — 84. If a false crime is imputed to him. — 85. If a false crime is imputed to the accuser. — 86. Whether the accused may resist; and whether he is obligated to flee, etc. — 87. Whether he may break out of prison; and whether he may corrupt a guard with a bribe. Whether others may assist him in this, etc. 73. — And I. Many doctors have written concerning the accuser, which can be observed in our work; but because these matters pertain more to the forum than to conscience, we omit them; we will only note some of the more important points. It should be noted 1. that there is a difference between an accusation, a legal denunciation, and an evangelical or paternal denunciation. An accusation is that which is made to a superior as a judge, so that the accused may be punished, with the obligation to prove the crime, and to incur the penalty, unless the crime is proven. A legal denunciation is made to a superior as a judge, but without the obligation to prove the crime. An evangelical or paternal denunciation, on the other hand, is made to a superior as a father. It should be noted 2. that when it is a question of avoiding common harm, everyone is obligated to accuse the offender, such as in the case of treason, heresy, or theft in a public place, and the like: and in these cases, as Sanch. says, the judge can sometimes justly obligate the offended party to reveal the offender, in order to prevent public harm. However, Sot., Caj., Sanch., Lugo, Salm., etc., generally say that it is sufficient to make a denunciation, because superiors are sufficiently satisfied with this (2). This obligation also exists when it is a question of avoiding harm to an innocent person, which would be a serious and grave inconvenience to the one who denounces. However, those who are hired by the republic, or by lords, to denounce or accuse offenders, are obligated to do so, even if it causes them great inconvenience;

otherwise, they must compensate for the damage that arises from such omission. Doubt- (1) Lib. 4, n. 235. — (3) N. 356.

[*Latin ed. p. 340*]

328 TRACT. XIII. ON PARTICULAR PRECEPTS, etc. Are those who are guardians of fields or tax collectors obligated to pay the value of a penalty if they do not report [a crime], whereas if they had reported, the penalty would have been imposed? Many, such as Soto, Molina, Laym., etc., affirm this; but many others commonly deny it, such as Azor, Lessius, Lugo, Sanchez, Navar, Salmant., etc., because (they say) they sin against legal justice, but not against commutative justice with respect to the penalty; since the treasury or the lord does not acquire the right to a penalty except after a sentence; all the more so, since the purpose of the law is nothing other than to keep the lords unharmed; therefore, it suffices for the guardians to restore only the value of the taxes that were to be paid, or the damage caused (1). 74.—Note 3. When it comes to repairing one's own damage, or that of relatives up to the fourth degree, or of the Church, clerics may lawfully accuse the guilty, even in cases of bloodshed; provided that they expressly state that they do not wish a corporal penalty, but only the restoration of damages (2). Note 4. When a crime tends towards damage to the common good, even if it is hidden, it must be reported after a warning, especially if the crime is heresy, as is stated in proposition 5, condemned by Alexander VII. But if the crime results in damage to only the guilty party, then correction must precede; but if that does not help, although it is said in the Gospel that it must be restored before one or two witnesses, nevertheless, if it is in a religious community, St. Thomas (3) says with St. Augustine that it is then advisable to report the crime to the superior before others; because (says the Doctor) the superior can do more good than others (4). Indeed, the Angelic Doctor elsewhere (5) observes that when a religious person sees that correction will be more useful through the superior than through himself, then he can immediately report the guilty party to the superior; for in secret correction, the principal goal is the amendment of the brother, rather than the preservation of his reputation; and the same is said by St. Bonaventure, St. Antoninus, Sanchez, Soto, Castrop, Laym., etc. (6). And Laym., Sanchez, and Suar. reasonably add that when a crime (whether grave or minor) has not yet been corrected, and there is fear of relapse, it is always better to report it to a superior who is considered prudent (as he should generally be considered, unless the contrary is known), who can always better repair the damage; all the more so, because all crimes of individuals in religious communities (as Suarez says) almost always result in damage to the common good, either because of scandal, or because of the disgrace that religion may suffer. In this regard, the rule of the Society of Jesus has been rightly approved by the pontiffs, that each religious person may report a crime to a superior without first

giving a warning (7). 75.—Note 5. When a crime is ordered to be reported by an edict or public warning, there is no obligation to report it unless the guilty party is defamed, or at least if there is an indication, or unless it is to the detriment of the community or a third party, but with this difference: that when the crime is only to the detriment of a third party, correction must precede, and there is no obligation to report it if it is to one's own detriment; but when the crime is to the detriment of the common good, quite the opposite; then there is no need to give a warning, and everyone is obligated to report it.

(1) Lib. 4. n. 257.

(a) N. 238. v. IV. Inimicus ad VI.

(3) 2. 2. q. 33. a. 3 ad 4.

(4) See 1. 4. 242.

(5) Quolib. XI. art. 15.

(6) Lib. 4. n. 245.

(7) N. 245. Quær. III et IV.

[*Latin ed. p. 341*]

CONCERNING THE ACCUSER, THE WITNESSES, AND THE ACCUSED. 329, even at one's own detriment (1). This applies to general admonitions, but when speaking of particular admonitions, for which the bishop issues excommunication (as conceded by Pope Pius V in the bull *Sanctissimus*), the one unjustly detaining, or not revealing within a certain time, the person who has stolen another's goods (understand, of notable value), must be warned. In this matter, one must consult the *Instructio Confess. tyron.* and Barbosa (2), who cite other authors who are generally in agreement, stating that one is not obligated to denounce: 1. the thief himself; 2. the one who knows the thief, but cannot denounce him without serious personal detriment; 3. the one who cannot be compelled to give testimony, such as a son, wife, or parents; and the aforementioned Instructor, along with Bonaventure, says the same about those related up to the fourth degree, and all those who are of the same family who are detaining the item; but servants are not excused, unless they can cease their service without serious detriment. However, infamous individuals, although they do not make a promise, are obligated to denounce: 4. the one who alone knows the fact, and cannot have another witness to prove it; 5. the one who does not know with certain knowledge; or who learned it from persons of doubtful faith, or does not remember from whom he heard it, or if he learned it from one who has already denounced; 6. the one who has justly compensated for his credit; 7. the one who was outside the diocese at the time of the admonition; but not the one who departed from the diocese before the term of the admonition expired; 8. the one who learned of the crime committed in secret, or by promise.

However, some canonists, as cited by Richard (3), such as Felin, Abbot of Rip, etc., hold that laypersons are obligated to denounce the thief, even if they learned of it in secret; but theologians generally, such as Soto, Azor, Salmantic, Navarrus, Filliucca, Aragona, etc., along with St. Thomas (4), teach the opposite. An admonition can also be issued for hidden authentic documents, even if they are not parts of the crime, but are of a third party; provided that this third party is not involved in the matter, as the same Instructor says, from chapter 1, on Proofs, 76. — Note 6 concerning the obligation to denounce heretics, if these are only suspected of heresy, such as confessors who incite to immoral acts, those who practice sorcery, those who abuse the sacraments, those who have two wives, or those who administer the sacraments who are not initiated into the priesthood (others add priests who break the sacramental seal; but this is more commonly denied by Lugo, Molinius, Bonaventure, Salmantic, etc.); also, those who utter heretical blasphemies must be denounced; but there is no obligation to denounce even at one's own detriment. And it is probable, as say Lezana, Bord, Dian, Homob., etc., that all those related up to the fourth degree are also excused from denouncing, because in this case there is always a serious detriment or inconvenience. However, if they are formal heretics, as is held by Suarez, Salmantic, Fel, Potest., etc., contrary to others, because heresy is a disease that always harms the common good. Therefore, these must be denounced even at one's own detriment, and not only by brothers, but also by wives, children, and parents, according to the most common opinion of Azor, Bonaventure, Roncaglia, Salmantic, Dian, and Viva (5). 77. — Note 7, especially concerning blasphemies, or heretical propositions, that when they have been uttered seriously and deliberately, there is an obligation to denounce within a month, as the aforementioned Instructor says, contrary to Salmantic, who wants within six days; but Salmantic speaks of particular laws of Spain. It is said seriously and deliberately, because there is no obligation (1) Book 4, no. 249. — (2) Book 4, *Instructio*, page 2, no. 265. Barbosa, on the power of the Bishop, allegation 96, from no. 44 to 67. — (3) Book 4, *In praxi, de monit.*, no. 12 and 13. — (4) 2-2, q. 70, art. 2 ad 2. — (5) Book 4, no. 249 and 256.

[*Latin ed. p. 342*]

330 TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. The obligation to denounce propositions or blasphemies uttered either through ignorance, or by a slip of the tongue, or by the impetuosity of anger, such that the speaker is carried away beyond the use of reason, or uttered without pertinacity, which is always necessary to incur the obligation to denounce, as the same Salm and others (1) state. Formerly, according to the Council of Lateran, there was an obligation to denounce all blasphemies, even the simplest; but, as Sanch., Tambur., and Mazzotta state, this obligation has today

fallen into disuse, at least according to the opinion of Salm. with Bonac., Trull., etc. This obligation ceases if the offender is corrected (2). 78.—Note 8. In general, superstitions should also be denounced when they are qualified, that is, when they are performed with an express pact or invocation of a demon, or by worshipping it, or by reciting certain psalms or prayers by which that being seems to be invoked for help; or when consecrated hosts, chrism, or holy oil are abused; or if they have been taught or learned knowingly, or if consequences have resulted from them. It is said in general that, in our kingdom, with regard to sorcery practiced by laymen, by the suggestion of our reigning King Charles, there is no obligation to denounce them to the ecclesiastical court, unless the abuse of the Eucharist or of holy oil is involved (3). Note also that those who culpably fail to denounce are subject to excommunication, but a sentence that can be imposed; and it is not reserved to the Holy See, as Bonac., Lugo, Fel., Potestas, etc. (4) point out. 79.—II. Regarding witnesses, we will omit here what pertains to the forum. We will note only 1. that a witness is not bound to confess the truth, as St. Thomas says (5), unless it is necessary according to charity to repair some public good, or the harm of a neighbor, or to obey the judge's mandate, who legitimately questions him, namely, when there is sufficient proof of the crime, or of evident evidence; otherwise, the witness is not bound to disclose what he knows (6). Likewise, he is not bound if it would cause him or his own harm, or if he has learned something under a natural secret, as St. Thomas says, book 2, chapter 2, article 2, unless the revelation would prevent a common harm, or would free a neighbor from some future harm (7). 80.—Note 2. If someone knowingly gives false testimony, and his testimony is for the purpose of causing harm to another, no one doubts that he is obliged to restore the entire damage (8). However, it is doubtful 1. whether a witness who refuses to confess the truth sins, and is obliged to make restitution, in the case where he is bound to reveal it either by justice or by charity? It is necessary to distinguish: if he avoids being summoned, he sins against charity, but not against justice; therefore, he is not then obliged to make restitution, as all agree. But if he is summoned and then flees, some hold that he is obliged to make restitution; but commonly, and more probably, Lugo, Less., Mol., Sylvest., and Bonac. deny it, because the summons only compels obedience, but not the act of justice (9). 81.—It is doubtful 2. whether a witness is obliged to make restitution who, when legitimately questioned by a judge, conceals the truth, i.e., by saying that he knows nothing? Many affirm that, since there is a judge's command, the witness is obliged by justice to confess the truth. But it is probable that Molina, Less., Bonac., Lugo, Raynaud, and others deny it, for the same reason stated above. (1) Book 4, note 252; and book 3, note 123. — (2) Book 4, notes 253 and 254. Note II. — (3) Note 255. — (4) Note 254. See Note III. — (5) 2-2, question 70, article 1. — (6) Book 2, notes 264 to 267. — (7) See

these, and other notes 268. — (8) Note 270. — (9) Hild. Doubts 1 and 2.

[*Latin ed. p. 343*]

OF THE ACCUSER, THE WITNESSES, AND THE ACCUSED. 331 account; for the judge's command does not obligate the witnesses to testify by justice, but only by obedience. Hence, Ciera (1) infers that the case of *Januarius* does not fall under the reserved cases, because, according to him, a reservation applies to a false statement made with positive falsehood, but not to a negative testimony. However, Bonac states that if a witness swears to something he knows to be true, he is obligated by justice to reveal the truth because of the promissory oath he has given. But Lessius plausibly responds that the witness, by swearing to tell the truth, does not intend to bind himself by justice, but only by the bond of religion, which does not obligate restitution (2). 32. — III. Regarding the accused, it should be noted that 1. the accused is not obligated to confess his crime if the judge is not legitimate, or if he is not legitimately questioned, that is (as has been said) without at least some prior proof, or infamy, or manifest indications of the crime, as St. Thomas says (3): "It is one thing to conceal the truth, and another to utter falsehood. Of these, the former is permissible in some cases; for no one is obligated to confess all the truth, but only that which the judge can legitimately demand from him, for example, when there is some prior proof." And even if there is doubt as to whether the judge is legitimately questioning the accused, he is not obligated to answer, because he, even though he has the right to his own life and reputation, in case of doubt, retains the right to protect them, until it is established that the questioning is legitimate; so commonly state Sotus, Lessius, Laym, Cajet, Sanch, Lugo, Navar, Busemb, Salm, against Palud and Sylvest (4). 33. — It is questioned 1. Whether, before sentence, the accused, when legitimately questioned, is obligated to confess his crime under the fear of a great penalty? Sotus, Lessius, Sanch, Salmant, etc., affirm this, along with St. Thomas (5); because the judge, when legitimately questioning, has the right to know the truth. But many others deny this, including Suar, Lugo, Sa, Peyrin, Fill, Henriq, Villal, Elb, Busemb, who believe that this law is too harsh and contrary to human weakness, as if it were impossible for anyone to be obligated to confess a crime as if he willingly desired to be condemned to a severe penalty (namely, death, galley slavery, perpetual imprisonment, or perpetual infamy, etc.), unless it were for the common good, e.g., in cases of heresy or rebellion. And if it is probable that such a law does not exist, it is equally probable that the judge does not have the right to demand from the accused a testimony of truth in that case. The first opinion is more probable, but we cannot call the second opinion improbable; rather, commonly, Sanch, Salm, and others say that the confessor should not obligate the accused to confess his crime if he sees that he will have difficulty in persuading him to do so, and knows that he is acting in good faith (6). It is said above, before

sentence, because after sentence, the judgment is complete, so the accused is no longer obligated to confess, as Laym, Sanch, Salm, etc., say. Indeed, they add that even before sentence, the accused is not obligated to reveal his crime, unless he is questioned again. But this is contradicted by Sotus, Navar, Sayr, and others commonly (as Sanch himself admits), because the judge's command persists before sentence (7). 84. — It is questioned 2. Whether one gravely sins who imposes a crime upon himself, a capital crime, in order not to be tortured by a great torment? Lessius, Sotus, Tol, Sylvest, Busemb, etc., deny this, because no one is obligated to preserve his life at such a great cost, according to what has been said in tr. 3, n. 2, in fine. Only Bu- (1) De casib. reserv. D. 2. n. 62. — (2) Lib. 4. n. 270. Dubit. 3. Regarding matters pertaining to the forum, see n. 272. — (3) S. Th. 2. qu. 69. art. 2. — (4) Lib. 4. n. 272 et 275. — (5) 2. q. 69. a. 1. ad 2. — (6) Lib. 4. n. 274. — (7) Ibid. in fine.

[*Latin ed. p. 344*]

TRACTATE XIII. ON PARTICULAR PRECEPTS, etc. It is asked whether, in cases where a confession might lead to common harm or infamy to a family, one is bound to make it. Against this, and with greater probability, argue Molin, Lugones, Navar, and Covarrubias; and although Lugones holds the first opinion as probable due to the authority of the Doctors, he nevertheless defends this opinion absolutely. The reason is that, although a man is not bound to preserve his life under extremely harsh circumstances, he cannot positively cooperate in his unjust death, since he is not the master of his own life. Therefore, Molina rightly infers that the accused is still bound to retract his statement, whenever and however he can, in order to prevent his death. But he also says that if the accused is acting in good faith, the confessor should not obligate him to retract, under the threat that he will suffer torment, because he would then be committing a formal sin, namely, committing a fault he had not previously committed, by imposing it upon himself (1). But if the accused has denounced an innocent person, there is no doubt that he is bound to retract, even if he were about to suffer any kind of torment (2).

Note 3: It is never permissible for an accused person, even if innocent, to falsely accuse the accuser or a witness in order to defend himself, as is certain from proposition 44, taken from the decrees of Innocent XI. On the other hand, it is permissible to reveal a hidden, but true, crime of the accuser or witness, because this absolutely leads to the recognition of one's own innocence, and to the avoidance of a serious harm; so say Sanchez, Milante, Roncaglia, Salmeron, and Vives (3); see the statements in treatise 11, number 7. And Sanchez, Roncaglia, Salmant, and Correglia say the same, that if the crime is completely hidden, a witness who testifies about a completely hidden crime is the same as if he were testifying about a false crime. And this, as Lugo, Milante, and Vives add, also applies even if the

witness is not testifying out of malice, but is summoned by a judge (4).

Note 4: If the crime is one of the excepted crimes, the accused is bound, even if not questioned, to reveal accomplices; otherwise, if the crime is not one of those excepted, then he is not bound, nor can he, if the crime is completely hidden. However, Laym, Lessius, and Busembach say that they do not sin if they reveal them under duress of torture (5).

Note 5: An unjustly condemned person cannot resist with force, e.g., by killing or wounding, as is certain from proposition 13 of Alexander VII. But he can positively resist, in order to free himself from the hands of the executioners, provided that there is no scandal or serious disturbance, as taught by St. Thomas (6). Otherwise, if he has not yet been condemned, but is held in prison: or if he is justly condemned to death (as the Saint himself says in 2); because the sentence only condemns, it does not prevent escape; he cannot resist at that time, but he can lawfully flee from prison; and the same is said by Soto, Toldeo, Cajetan, Roncaglia, Salmeron, etc., commonly regarding punishment by rowing, or by flogging, or by perpetual imprisonment; provided that the prison is not already designated as his punishment, as the Doctors commonly say. But Lugo, Sanchez, Lessius, Navar, and Salmant (against Vasquez, etc.), excuse those who flee from rowing.

The question is asked: Can the accused resist if the sentence was just according to external evidence, but unjust according to truth? Some deny this; but Lugo and Roncaglia do not improbably admit it, because the presumption must give way to the truth of innocence, which gives the right to defense, provided that this can be done without scandal and disturbance, as stated above (7). Some say that a person condemned to death is bound to flee if he can; but this (1) Book 4, number 275. — (2) Number 276, ad 3. — (3) Number 277, Responsio II. — (4) Ibid., v. Sed quid. — (5) Number 278. — (6) 2-2, question 69, article 4, at the end. — (7) Book 4, number 282, v. Sed.

[*Latin ed. p. 345*]

OF THE ACCUSER, THE WITNESSES, AND THE ACCUSED. 333. It is rightly denied by Soto, Sylvestri, Salmanti, and others, that one can remain in prison, especially if he does so in order to atone for his sins by undergoing punishment (1). 87.—Since, therefore, one condemned can flee from prison, he can also break out; for when the end is permitted, the means to that end are also permitted, as say Soto, Cajetan, Lugo, Tolosa, Lessius, Salmanti, and Roncaglia. Nor is he obligated to make amends for damages, because such damage resulting from the breaking out is accidental, as Salmanti, Valentia, Bannitus, and Sayr add. Furthermore, Salmanti, Roncaglia, Tamburini, and others say that the accused can also corrupt the guard with money; but I cannot agree with this, since it is never permissible to induce another to commit an intrinsically evil act, such as would be the

case if the prison guard opened the prison, thereby neglecting his duty (2). But if it is permissible for the accused to flee, it will also be permissible for others to assist him with ropes, files, or other instruments, as taught by Sylvestri, Vasquez, Lessius, Lugo, Sanchia, Roncaglia, Busembach, and Salmanti, contrary to Soto; provided that the escape does not endanger the Republic, as rightly limit Salmanti and Roncaglia, for example, if the person escaping were a highway robber. It is forbidden to everyone to break into prisons in order to release the condemned; Roncaglia and Busembach agree with this (3). How a confessor should behave with those condemned to death, see what will be said in Volume 3, in the last section, point 8.

TREATISE XIV. ON THE SACRAMENTS IN GENERAL, AND ESPECIALLY ON BAPTISM AND CONFIRMATION. CHAPTER I. ON THE SACRAMENTS IN GENERAL. 1. Of attention and intention. — 2. What intention is required in the minister. — 3. Of administration under a condition. — 4. Whether the sacrament should be denied to a sinner. — 5. When is Communion given. — 6. If the spouses are in sin. 1. — Regarding the sacraments in general, there will be a more extensive discussion in Appendix 3, on the Examination of those to be ordained. Here, we will only note some of the principal points, which are briefly touched upon there, as far as they are sufficient for the knowledge of those being ordained, but which require greater consideration with respect to the confessor. Note 1. That Croix requires, in the minister, in addition to intention, attention in order to validly confect the sacrament. But this is entirely a special case and does not have a solid foundation; for if this were the case, it would follow that if the minister were voluntarily distracted, even if the intention were virtually present, the sacrament would not be confected; but in the confessional, it is the opinion of all that, for the validity of the sacrament, nothing else is required than the matter, the form, and the intention of the minister; therefore, Suariz, Lugo, and others, along with Croix himself, teach that, even if the minister were distracted, as long as his intention is present, the sacrament is certainly confected (4). Whether the minister gravely sins by voluntarily distracting himself in the confecting of the sacraments, is the common opinion (1).

(1) Lib. 4, n. 281.

(2) N. 282.

(3) N. 283.

(4) Lib. 6, n. 14, and Lib. 4, n. 177, v. 3. Reasons and Croix, 1. 6, p. 1, n. 85.

[*Latin ed. p. 346*]

334 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, etc. It is permissible to sin venially in the other sacraments; however, it must be ensured that there is no danger of error; but in the consecration of the Eu-

charist, the Council and Tamburini (against Croix and Mazz.) state that one gravely sins (1). 2. — It must be noted that the habitual intention of the minister is not sufficient, and much less a merely interpretative one; but an actual intention, or at least a virtual one, is required. (What constitutes an actual intention, and what a virtual one, or a habitual one, or an interpretative one, see in the Examination, no. 9.) However, a forced intention, that is, one extorted by fear, is sufficient, since such fear does not negate the voluntariness. Furthermore, the minister's error concerning the person does not constitute an impediment; for example, if a priest intends to absolve one person, but absolves another (2). These things are certain; what is doubted is whether a sacrament conferred with the matter and form is valid, but without the intention of doing what the Church does? Luther universally affirmed this, even though the action was performed in jest; but this was condemned by the Council of Trent, Session 7, canon 11. Others, such as Gonet, Juvenin, Contenson, Serry, Milante, etc., affirm that, if the action is performed seriously. But the true teaching holds that it is necessary to have the intention of performing the sacramental rite, which the Church, taught by Christ the Lord, intends to perform; as Bellarmine, Suarez, Vasquez, Tournhem, Petrocchi, Concina, Antoine, Salm, Lugo, Bonetti, and countless others teach, along with Benedict XIV (3). Cardinal Bellarmine says that the contrary opinion differs nothing from his; Cardinal Lugo likewise says that it is rejected by all, and does not differ greatly from Luther's error; and Father Vasquez calls it already condemned. Against this, our opinion is first proven from the Council of Trent, Session 14, canon 6, which states that there is no sacramental absolution if the priest does not seriously intend, and truly (note), to absolve. Therefore, besides the action, even if performed seriously, the intention to absolve is necessary. Furthermore, it is proven from proposition 28 of the condemned propositions of Alexander VII, which stated: "Baptism conferred by a minister who observes all the external rites and the form of baptism is valid, even if, in his heart, he resolves: I do not intend to do what the Church does." It cannot be said that this proposition refers to a jocose external rite, because such a proposition was not that of heretics, which had already been condemned by the Council of Trent, but was that of Catholics, among whom no one ever said that a jocose rite was sufficient. The principal reason for our opinion is that which is given by St. Thomas (4), namely, that the action of any sacrament can refer to several things; for example, the ablution in baptism can refer to the removal of either bodily stains or those of the soul, and therefore the minister's intention is necessary, which determines the purpose of that action, to do what the Church does; otherwise, if someone were to wash a child solely to prevent him from appearing dirty, and say: "I baptize you, or I wash you in the name of the Father, etc.," would this be a true baptism in the opinion of our adversaries? I do not see how this could be said. Hence, the Angelic Doctor elsewhere (5) says: "If the minister does not intend

to confer the sacrament, the sacrament is not conferred"; at least, wisely says Benedict XIV, in the place cited: The sacrament conferred according to the contrary opinion would have been illicitly conferred, and at the very least would certainly have to be repeated (6). 3. — It must be noted that it is permissible to confer sacraments under a condition of necessity, and not only baptism, as expressed in chapter 2 on baptism, but also other sacraments, as commonly stated by Castiglione, Suarez, Concina, Habert, Roncaglia, Salm, etc., against Juvenal; and not only in a case of necessity, but (1) Lib. 6. n. 14. v. Utrum. — (2) Num. 19. v. sufficit. — (3) De Synod. l. 7. c. 4. n. 9. — (4) 3. p. q. 64. aut. 3. — (5) Opusc. 4. alias V. VI. VII. — (6) Lib. 6. n. 20 ad 25.

[*Latin ed. p. 347*]

OF THE SACRAMENTS IN GENERAL. 335. Whenever there is a grave necessity, or a just cause, even commonly cited authors acknowledge this, contrary to Antoine. Conversely, without a just cause, it would be a grave sin; although Tourn. and Salm. do not condemn a confessor who grants absolution under the condition that the penitent is disposed, for his own greater caution, even if he judges the penitent to be disposed (1). However, it is not necessary that the condition be expressed; it suffices if it is present in the mind, as commonly stated by Castrop., Tourn., and Salm. (2). 4.— Note that it is not to be denied that the sacrament should be given to a secret sinner who publicly requests it, as taught by St. Thomas (3), and as expressed in the chapter "If a priest, regarding the office of judgment, of the order." The order is excepted, which even for secret sinners the bishop can deny, as in volume 3, appendix 3, on Examination, number 15; conversely, it must be denied to a public sinner, even if he publicly requests it (4). In the case of doubt regarding sin and repentance: if the sin is certain and the repentance is doubtful, it must also be denied; otherwise, if the offense is doubtful (5). If the sin is not simply public, but is known to a majority of those present, and only one or two are unaware, it may probably be denied, as stated by Croix and Diana; but it is more probable that it should not be denied, as held by Suar. and Bonac. See the aforementioned, volume 1, treatise 11, number 11 (6). But if the sinner receives the sacrament in a place where the offense is hidden, although it might be public elsewhere, we say, with Cabass., Soto, Vasq., etc., contrary to others, that it cannot be denied; because in that case, the same inconvenience would occur as if the sacrament were denied to a sinner whose offense is public nowhere (7). 5.—Note that, as prescribed by the Roman Ritual (regarding the Eucharist), communion should be denied to public sinners whenever it is not also publicly evident that they are repentant, and not before they have considered the scandal they have caused to others. However, Possevinus, Santius, Busemb., and Croix state that a confession made before many people may suffice, provided that it is made manifest to others, unless

there is an immediate opportunity to prevent it; for if such an opportunity exists, and the sin is already publicly known, communion should not be given to a public sinner, unless the opportunity is removed (8). Whether a priest can administer communion to a public sinner out of fear of death, is admitted by Bonac., Croix, etc.; but we, with Ledesma, Conc., and others, deny it, because the injury to the sacrament should be avoided rather than one's own harm. It may be objected that, since a minister can administer communion to a secret sinner (as stated above) to avoid his infamy, all the more so can he administer it to avoid one's own death. The response is that communion can be given to a secret sinner only to the extent that his infamy is avoided, insofar as his infamy would result in harm to others, who, seeing him publicly shamed for his hidden sin, might more easily be afraid of communion, fearing that they might be expelled by an imprudent priest. But this reason for avoiding public harm does not apply in our case (9). See also treatise 15, number 15. 6.—Note that a parish priest cannot lawfully assist at the marriage of betrothed who are public sinners, as rightly stated by Benedict XIV (10), contrary to Laym., Lug., Croix, etc., who state that the parish priest is obligated by the duty of his office to assist, and that such assistance is purely material. We, however, say that betrothed in such a state do not have the right to the parish priest's assistance.

(1) Book 6, numbers 27 and 28.

(2) Number 29.

(3) 3rd part, question 80, article 6.

(4) Book 6, number 50.

(5) Number 48.

(6) Number 45.

(7) Number 46.

(8) Numbers 47 and 48.

(9) Number 49.

(10) De Syn., number 8, chapter 14, number 5.

[*Latin ed. p. 348*]

336 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, etc. the matter to be investigated, and therefore, when he can lawfully refuse his assistance, he is bound to refuse, lest he become a participant in their sacrilege. The same reasoning applies to witnesses; but the parish priest is further obligated by justice to prevent his flock from sinning (1). And it must be noted that, according to the decree of Clement XI, confirmed by Benedict XIV, the parish priest ought not to proceed with the publication of banns unless he first examines the betrothed and finds them sufficiently instructed in matters of faith (2). Whether, however, it is lawful for a priest to contract marriage and consequently administer the sacrament to a betrothed person who is a public sinner, the authors Sanch. Lugo and Croix state that the

betrothed are to be considered as private contracting parties; in marriage, indeed, the contract is directly entered into, but the sacrament is indirectly conferred; but this reasoning does not seem convincing, since the administration of the sacrament is also attached to such a contract. Therefore, I think it can only be said that, as with ministers who are not consecrated for this purpose, the aforementioned administration would not constitute a grave sin for them, as Gonet, Suar., Tourn., Habert, Juven., Natal., Alex., Conc. Salm., etc., probably hold. Although the opposite opinion, that it is a grave sin, is held by Pontius, Lug., Navarr., Vasquez, Contin., Tourn., Croix, etc., this opinion seems to me more probable (3), as will be said in Vol. 3, Appendix 3, No. 12. It should be noted that marriages with heretics are forbidden by the Church (4). Other matters pertaining to the knowledge of the sacraments in general will be noted in the aforementioned Appendix 3, Chapter 1, Nos. 1 to 10.

CHAPTER II. ON THE SACRAMENT OF BAPTISM.

POINT I. ON THE MATTER, FORM, AND MINISTER OF BAPTISM.

7. What are the different kinds of Baptism?

8. On the remote matter.

9. On the proximate matter; and whether the matter can be dispensed with.

10, 11, and 12. Can a fetus in the womb be baptized, etc., and in which member, etc.?

13. Is a triple ablution required?

14. On the form.

15. On the minister.

16. On the order of ministers.

17. On those who are baptized externally.

18. On the deferral of baptism; and on baptism at home, etc.

7. BAPTISM is commonly divided into that of water, of fire, and of blood. It is called that of water, namely, water, and this is the subject of our discussion, and this is properly the sacrament; that of fire, namely, the Holy Spirit, who is called a Flame, when reference is made to the coming of the Holy Spirit upon the Apostles on the day of Pentecost in the form of flames or wind; and this is properly understood as the conversion of the soul to God, inspired by the divine Spirit, expressed either explicitly or implicitly in the true desire for baptism: and this desire alone is sufficient for salvation, when baptism cannot be received. Finally, baptism of blood is understood as death suffered for the faith, or even for another Christian virtue, as taught by St. Thomas (5), and indeed the Church venerates

certain saints in the Martyrology on February 28th as martyrs who died while serving the infected during a plague. And this martyrdom is equated with baptism, because it also remits guilt and punishment; however, it must be associated with contrition for sins, or with a pure love for God; for martyrdom would not suffice with mere attrition without a predominant love, as is held by St. Thomas, St. Bonaventure, Scotus, Laym., Petrocor., etc., against Wigandt, Viva, and others (6). It should be noted here in passing (1) Book 6, No. 54. (2) On Synods, I, 3, c. 14, No. 5. (3) Book 6, Nos. 32. (4) Nos. 56 and 1044. (5) 2. 2. q. 124, a. 5. (6) Book 6, Nos. 95 to 100.

[*Latin ed. p. 349*]

OF THE MATTER, FORM, AND MINISTER OF BAPTISM. 337 It is not permissible to offer oneself as a martyr without a special prompting of the Holy Spirit, unless, in some case, it would be gravely wrong to offer oneself otherwise, as the Doctors commonly say. Thus, Layman says that he sins who, being among heretics, would abstain from meat during Lent with the danger of revealing himself to be a Catholic and being killed (1). 8. — But let us now proceed to speak of the matter of baptism. The remote matter is consecrated water; otherwise, he would sin gravely if he were to use any other water without necessity, as the Doctors commonly say, following Clement of Alexandria on baptism. Furthermore, in private baptism, it is probable that it is permissible to use unblessed water; so say Croix, Gobat, Paschal, and Quintan (2). The valid remote matter is any natural water, whether it be mineral, or sea water, or water melted from ice, or mixed with another substance of lesser quantity, which nevertheless retains the common use of water. On the contrary, wine, milk, the juice of fruits, or extracts from herbs are not valid matter, nor is water when it is frozen (3). It is doubtful whether lye, or beer, or distilled water, that is, water extracted by the alchemical art from flowers or herbs, etc., are valid matter, because simply distilled natural water, or water infused with roses or other flowers, is true water (5); it is also doubtful whether one or both drops of water are valid matter (7). Doubtful matter may not be used, unless in a case of necessity, and with the appropriate condition; but it must be noted that in a case of necessity, the minister is bound to use doubtful matter, even if the opinion regarding the value of the sacrament is less, indeed, only tenuously probable, as commonly taught by Suarez, Cajetan, Antoine, Holzman, Viva, and others (8). See treatise 16, numbers 36 to 38, concerning what is to be said about absolution to be given to dying sinners deprived of their senses. 9. — The immediate matter of baptism is the same ablution, which can be performed in three ways: by immersion, aspersion, and infusion, which is the method used today. If a child is thrown into a river with the utterance of the form, it is probable that the baptism is valid; but this is never permissible, because it is not permissible to kill anyone in order to baptize him, and it is permissible if, after baptism, he would

die without baptism; and therefore, as St. Thomas teaches (9), it is not permissible to baptize a child by killing the mother, or by harming her with a sharp instrument, or with a probable danger of her death, even if she were dying and consented. It is permissible to harm the mother only after she has certainly breathed her last. And here, Croix points out this practice, namely, that immediately after the mother's death, her mouth should be opened, so that if the child is alive, he may not be suffocated (10). Cangiamila (11), along with Possevin, Gobinus, etc., say that parents sin gravely if they neglect to ensure that an incision is made, and also that surgeons sin if they neglect or delay it. And he adds that the parish priest must do everything in his power to ensure that the mother is not buried before the incision is made; otherwise, he says that he does not know how he can excuse him from irregularity, since he is bound by his office to prevent the death of the child. But I do not know if I can agree with this opinion; for when the child's life is not certain in such a case, neither is his death certain. Furthermore, he says (chapter 10) that if another person is found, even if he is not a surgeon, who has the ability to make the incision, he is bound to perform it. Moreover, Cangiamila (book 4, chapter 4, number 5) says that if the child has not yet fully emerged from the womb, baptism should be given not by the parish priest, but by the midwife. Furthermore, (1) Book 6, number 101. — (2) Number 102. — (3) Numbers 102 and 103. — (4) Number 103, part III, on Matter. — (5) Number 104. — (6) Ibid., Doubts 2, 3, 4. — (7) Number 107, part VI, Question. — (8) Number 103, at the end of part III. — (9) 5th part, question 68, article 11, ad 3. — (10) Book 6, numbers 105 and 106. — (11) Cangiamila, Embryology, book 1, chapter 2, number 1, 22.

[*Latin ed. p. 350*]

338 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, etc. The same author (cited above) notes the signs of impending death: namely, 1. if an infant is born without crying or moving; 2. if it breathes very little, and the skin, especially the face, is pale; 3. if the birth is accompanied by great labor and the assistance of midwives; 4. if the infant is born before the completion of the seventh month of gestation (and the same is said of any abortion); 5. if the skull is too soft and the fontanelles are too open, or if other parts of the body are disjoined. The same should be said of illegitimate infants, who are feared to be killed by their parents, or at least exposed in places where there is no one to care for them. But if the mother has been condemned to death by the law, see work (1), 10. — It is questioned: 1. Whether it is permissible, in cases of necessity, to baptize an infant in the mother's womb, using some instrument by which the water can reach the child? Gotti, the Council of Juvenal, etc., deny this, citing St. Thomas (2), who says: "No one should be baptized before being born from the womb." The reason for this is that, according to the Gospel, no one can be reborn through baptism unless one has been born, etc., John 3:5, unless he has first been born. However, Suarez,

Pignatelli, Tournhem, Elbing, Holzmüller, Concinius, Croix, and others, strongly assert the contrary, and Benedict XIV adheres strongly to their view (3), because such an infant, already being a living being, is capable of baptism, and one can also say that an infant living in the womb of its mother has been born, as was said concerning the Incarnate Word: "That which was born in her was of the Holy Spirit," Matthew 1:20. For, as St. Thomas says (4), there are two kinds of birth, the first in the womb, the second outside the womb. This is made clearer in chapter 4 on Baptism, where it is said: "In carnal generation, by which a child is born from a man and a woman, etc.," it should be noted that it is not said only from the woman, but from a man and a woman. Therefore, it is rightly said that one is born alone, and it can be understood that the child is born from the father as well. Thus, the Angelic Doctor does not mean anything different when, in the passage cited above (5), he says that it cannot be baptized in the womb, insofar as he assumes that before being born, it cannot in any way be washed with water; therefore, if it can be washed, it can be baptized. And Benedict says that, today, according to the judgment of doctors and midwives, it is certain that water can reach the infant in the womb. Furthermore, he cites Sylvester and Vasquez, who say (and Layman also considers this probable, along with Angel Armil and Prepositus, etc.), that the infant can also be baptized while still enveloped in the amnion, which is considered to be part of the infant's body, since it is attached to the umbilical cord. Therefore, in the aforementioned cases, when there is a danger of death, the infant should always be baptized, under the condition (6). It should be noted here, with St. Thomas (7), that in cases of necessity, if the infant has not yet emerged from the womb and is baptized on the head, it should not be rebaptized, whatever Sambovius may say, as the Roman Ritual also says; but if it is baptized on another part of the body, then baptism should be repeated under the condition (8). 11. — It is questioned: 2. Whether baptism can be administered by pouring water over only the hair of the infant? Bonacini, the Council of Concina, etc., deny this, but Lugo, Tolosa, Valentia, the Council of Ledesma, Graff, etc., generally admit it, because, although the hair is not alive, it is not, however, pure excrement, but is a true part of the body; just as the outer skin is not alive, and yet water is poured over it for Baptism. Therefore, in cases of necessity, baptism can and should be administered over the hair, under the condition (1).

(1) Lib. 6. n. 106. v. Omnino.

(2) 3. p. q. 68. a. 11.

(3) De Syn. 1. 7. c. 5. n. 2.

(4) 4. Sent. dict. VI. q. 1. ad 2.

(5) 3. p. q. 68. a. 11.

(6) Lib. 6. n. 107.

(7) Ib. a. 11. ad 4.

(8) Lib. 6. n. 107. v. Hic autem.

[*Latin ed. p. 351*]

OF THE MATTER, FORM, AND MINISTER OF BAPTISM. 339, it ought to be applied more readily to the feet, or to the fingers and other smallest parts of the body. But baptism applied over clothing is certainly not valid (1). 12.—It is inquired whether baptism is certainly valid when conferred not on the head, but on the chest, on the shoulders, or on other principal parts of the body? The more common opinion affirms this; but Anacl. Conc. and Platel. doubt, and even St. Thomas (2) doubts. Therefore, they rightly say Tourn. Viva, Salm. Trull. Ledesm. that it is licit to be rebaptized under the condition: "If you have not been baptized, etc." (3). 13.—It is inquired whether a triple ablution is certainly required in baptism? As to validity, it is certain that one ablution suffices, as from canon 4 of the decrees on Consecration, where St. Gregory says that one should immerse three times or once. Furthermore, the Rituale prescribes a triple ablution, and we hold, with St. Thomas (4) and others (contrary to Holzm.), that this prescription is grave, since the matter is grave; for in it the mystery of the Most Holy Trinity is expressed. And it should be noted that, according to Laym. Reg. Busemb., the form should not be terminated before the third ablution (5). 14.—II. Concerning the form of baptism in the Latin Church: "I baptize you" in the name of the Father, and of the Son, and of the Holy Spirit; in the Greek Church, it is: "May the servant of Christ be baptized in the name of the Father, etc." Alexander VIII condemned this in Propositio 27, stating that formerly, the words "in the name of the Father, etc." alone were sufficient. It should be noted that if the change is substantial (namely, if the sense of the form is corrupted), then the baptism is rendered invalid; but not if the change is accidental, namely, if the sense is preserved. Therefore, the change is accidental, and consequently, the baptism is valid, 1. if the language is changed, or the form is pronounced with words of a different language; for in the sacraments, it is not required that the minister or the recipient understand the words, but it suffices that they are significant in themselves. And when conferring baptism, it is better (as many doctors say) that women and the uneducated use their native language, lest they err. 2. If, instead of "I baptize you," one were to say "I wash you," "I cleanse you," etc., such a change would not exceed a venial sin, as Laym. Bonac. and Busemb. say. But if one were to say: "In the name of the Father, and the Begotten, etc."; or, instead of "Son," one were to say "Jesus Christ," then at least the baptism would be doubtful (6); 3. if one were to say "battizo" instead of "baptizo," or "Son" instead of "Filius," or "Father and Son, and Holy Spirit" instead of "Father, etc."; for such a baptism has been upon declared valid by Pope Zachary, c. Retulerunt, de Consecr. d. 4; 4. if the words are transposed, saying: "You I baptize, in the name of the Son, and the Father, etc." (7); 5. if it is said "in the name of the Almighty Father, and

the only-begotten Son, etc.," or if someone, out of undue devotion, were to add "and in the name of the Virgin Mary." It would be invalid if it were said: "I baptize you in the names of the Father, or in the name of the Most Holy Trinity, or in the name of the three divine Persons." But if it were said: "In the name of the Father, in the name of the Son, etc.," then some hold that the baptism is doubtful (8), as do Bonac. Tourn. Busemb. Salm. etc. 6. If the word "I" or "Amen" were omitted, but if "you" were omitted, according to the common opinion, the baptism would be invalid. But if the particle "and" were omitted, saying "in the name of the Father, Son, Holy Spirit," some say it is valid, others invalid; therefore, it would be repeated under the condition: but if the particle "and" were placed before "Holy Spirit," I do not doubt with Croix that the baptism would be valid, because, according to the common usage, the words "and of the Holy Spirit" are understood.

(1) Lib. 6. n. 167. Quær. III.

(2) 3. p. q. 68. a. 11 ad 4.

(3) Lib. 6. n. 107. Qu. IV.

(4) 3. p. q. 66. a. 8.

(5) Lib. 6. n. 107. Quær. 5.

(6) N. 108 et 109.

(7) N. 110.

(8) N. 114.

[*Latin ed. p. 352*]

340 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, Etc. the distinction of names suffices to fulfill its function, and it should be placed after the last name (1). It is also doubtful whether baptism is valid if the word "in" is omitted, which some, such as Soto, Navar, and the Council of Trent, consider to be essential. For sometimes, when this word is omitted, the meaning remains ambiguous, if it is said that the formula is in the authority of the Most Holy Trinity, or by invoking the three divine persons. But this is opposed by Bona, Concinius, and Salm, who say that it is not essential, because even if the word "in" is added, the meaning still remains ambiguous (2). Certainly, baptism is invalid if it is conferred only in the name of Christ, as taught by all, following St. Thomas (3), from chapter 30 of the De Consecratione, dist. 4. The text (Acts 8:12) does not contradict this, which says, "They believed and were baptized, and they received the Holy Spirit, because upon them who were baptized, the name of Jesus Christ was laid." This is understood in the sense that this baptism was instituted by Jesus Christ, and not by John the Baptist. On the contrary, from the same Acts, it is proven that the names of persons were expressed, because when it was said to those who said they had not even heard that the Holy Spirit was present, "In what name, then, were you baptized?"

(Acts 19:3), it is clear that the names were mentioned. Nor does the text in chapter A, of the De Consecratione, dist. 4, contradict this, where Pope Nicholas said, "If they are baptized 'in' the name of the Holy Trinity, or of Christ, they should not be rebaptized." For, as the Glossary explains, the word "Trinity" means that when the Pope says "in the name of the Holy Trinity," he does not intend to exclude the explicit expression of those persons (4). 15. — III. Regarding the minister, it should be noted that 1. baptism is validly conferred by any minister, even a heretic or an infidel (5). But outside of necessity, baptism can lawfully be conferred only by priests. Indeed, the proper minister of baptism is the ordinary pastor, namely, the bishop or the parish priest, who can, in turn, entrust the administration to other priests, and in their absence, even to deacons; but deacons, without a commission in necessity, cannot lawfully administer baptism; and by doing so (according to the more probable opinion of Layman, Bona, Tournhem, Habert, etc.), they incur irregularity; since deacons are not ordained to baptize, unless by the commission of a priest. It is not doubted that clerics who are not deacons incur irregularity by solemnly baptizing, according to chapter 1 of the De Clericis non Ordinatis, etc. On the contrary, Lugo, Castropalus, Bonacini, and Layman, etc., (against Soto, Suarez, and the Council of Trent), more probably say that laymen do not become irregular by solemnly baptizing; for although the text speaks generally, saying, "If anyone," etc., those words should be referred to the title which treats only of clerics (6). Furthermore, it is certainly a grave sin for laymen to baptize without the commission of their own pastor, according to canon 21 of the De Consecratione, dist. 4. Nevertheless, it is sufficient to presume this license, as say Salmanticus, Mirandus, and Henricus (7). 16. — It should be noted 2. regarding the order of ministers in baptism (from the Roman Ritual), that the priest should be preferred to the deacon; the deacon to the subdeacon; the cleric to the layman; and finally, the man to the woman; but sometimes, for reasons of propriety, a woman should be preferred to a man (and therefore, parish priests should carefully examine midwives, as stated in t. 1, tr. 7, n. 45, ad 4.), or because the woman is better instructed than the man; and if the man is the father to be baptized, then the woman should certainly baptize, since it is forbidden for parents to baptize outside of extreme necessity (8). It is certainly a grave sin for laymen who baptize in the presence of a priest, according to canon 21 of the De Consecratione, dist. 4. (1) Lib. 6, n. 112. — (2) Ibid., Dubit. 2. — (3) 3 p. q. 66, a. 6. — (4) Lib. 6, n. 112, Dubit. 3. — (5) N. 113. — (6) N. 116. — (7) N. 115, v. Notand. II. — (8) N. 117.

[*Latin ed. p. 353*]

ON THE MATTER, FORM, AND MINISTER OF BAPTISM. 341, unless the priest is excommunicated, as correctly stated by Suarez, Castrop, Navar, Sylvester, and Salmantic, (against Soto and Sayr), because it is conceded

that an excommunicated person may baptize only in cases of necessity, which is not present whenever another can be found (1). But if he were to baptize in the presence of a cleric, even a deacon, he would probably not sin, unless venially (2). It is certainly gravely sinful for parents to allow their children to be baptized by anyone other than their own pastor, except in cases of extreme necessity, even if they do so out of fear of the prince's decree (3).

17.—Note 3. Neither bishops nor parish priests can baptize outside their diocese or parish without the commission of their own pastor. Therefore, it is certainly gravely sinful for parents to bring their children to others for baptism without their permission (4). Pilgrims and vagrants who do not have a permanent residence can be baptized in any church; so say Barbosa, Salmantic, and Croix, from chapter "Concerning Numbers..." question 3. But the question arises whether outsiders should receive baptism and other sacraments from the pastor of their own domicile, if they are only a short distance away; or whether they can receive them from the pastor of the place where they live and have established a quasi-domicile? It should be noted that a domicile is established not by a mere passing through, but by residing in a place for a significant portion of the year, or with the intention of remaining there for a significant or notable portion of the year, for reasons such as work, business, or service, e.g., a doctor, merchant, host, servant, etc.; so say Laym, Navar, and Lamb (5) with common opinion.

Now, let us come to the question. There are two probable opinions. The first, held by Ledes, Ang, Rodr, and Henriq, etc., is that sacraments should be received from the pastor of one's own domicile, because otherwise (they say) the outsider would have two parishes of residence. But this reasoning is not convincing; therefore, the second opinion is more probable and more common, held by Barb, Sanch, Sylv, Castrop, Pontius, Croix, Bon, Salmantic, etc., along with many decisions of the Rota, which says that sacraments can be received from the pastor of the domicile, since everyone who lives in a place is subject to the jurisdiction of that place, as stated in the chapter "Concerning Parishes" (6).

18.—Note 4. It is gravely sinful for those who delay the baptism of infants for a long time. Laym and Castrop consider a delay of a month without cause to be grave, and a delay of two months with cause to be grave. But the more common and probable opinion considers a delay of more than 10 or 11 days to be grave (7).

Note 5. It is forbidden, under a grave penalty, to baptize infants privately, except for the children of kings or princes, as stated in the Clementine Decretal, on Baptism. And, as correctly stated by Soto, Castrop, Tol, Covar, Croix, etc., such infants should be baptized solemnly; for ceremonies should not be omitted except in cases of necessity. Some doctors understand "princes" to mean all barons; but it is more probable, as stated by

Suar, Tourn, Ronc, Tambur, Elb, etc., that they mean only those who have absolute dominion; the same is held by the Glossa in the cited Clementine (ad verbum aliquos), citing chapter "Foundations," 17, § "Therefore, concerning Electors," where it says "king, prince, marquis, duke"; therefore, princes are distinguished from barons; however, it has already been established that the children of barons, at least of nobles, can be baptized privately, as Croix rightly says, and it is not easily to be condemned; see number 30.

Note 6. There is no baptism if one person applies the matter, and another (1) Book 6, number 117, doubts 1 and 2. — (2) Ibid, doubts 3 and 4. — (5) Ibid, doubt 5. — (4) Number 114. — (5) Notification 32, number 9. — (6) Book 6, number 115. — (7) Number 118, see Note II.

[*Latin ed. p. 354*]

342 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, etc. form; the Doctors commonly agree with St. Thomas (1); and although the form of the Greeks is used, "Baptize the slave of Christ, etc.," it is still understood that the words "in the name of the Father, and of the Son, and of the Holy Spirit" are spoken (2). Note 7. If several ministers were to administer baptism to an infant at the same time, they would undoubtedly sin gravely; but with regard to the validity of the sacrament, one must distinguish according to St. Thomas (3): If anyone intends to baptize as a cooperator, that is, depending on another, the baptism would be invalid; otherwise, if anyone intends to baptize by himself, as happens in the consecration of the Eucharist, when the newly ordained priests celebrate with the bishop (4). POINT II. ON THOSE WHO CAN BAPTIZE. 19. The penalty for rebaptizing. — 20. On unborn fetuses and on the children of the infidels. — 21. If the parents object. — 22. Whether it is permissible to sell children to infidels. — 23. On baptism under a condition. — 24. On exposed infants. — 25. On baptisms performed by laymen. — 26. By heretics. — 27. If the baptism is doubtful. — 28. Preparations for baptism. — 29. On ceremonies, and I. on consecrated water. — 30. II. on the Church. 19. — NOTE 1. Infants can be validly baptized and should be baptized, but those who have once used reason cannot be baptized if they have not previously requested it (5). Note 2. When baptism is repeated without a just cause, both the one who rebaptizes and the one who is rebaptized, if of sound mind, incur an irregularity, chapter 2 of the Apostolic Canons. However, whether the same applies to those who rebaptize under a condition without a just cause, there are two plausible opinions: Suarez, Castrop, Laym, Bonac, Anac, Pont, Tourn, Holzm, Salm, and Croix deny it, because those who rebaptize under a condition do not truly rebaptize. On the other hand, Sotus, Filliuc, Conc, Ren, Barbos, Sayr, and Lambert agree with the Roman Catechism; because, as they say, such a condition is added in fraud of the law, and therefore it is considered as not being added (6). 20. — Note 3. Unborn fetuses, unless it is certain that they

are without a soul (which should be judged by those who do not have any organ development), should always be baptized, but under a condition; especially since it is now widely accepted among modern experts that the fetus receives a soul either at conception, or at least after a few days (7). Note 4. As the Roman Ritual prescribes in the sole case of necessity, several can be baptized under one form, saying: "I baptize you, etc." (8). Note 5. Concerning the children of the infidels, the baptism conferred is valid, even if it is administered without the consent of the parents, as taught by Benedict XIV in his Instruction to the vicars general, which begins with "Lastly" (See Bull. ed. Mechl. t. 5, p. 6), and others commonly with the authority of St. Augustine; whatever Durand and Catarin may say (9). But it should also be noted that if the parents apostatize from the faith and become infidels, their children can lawfully be taken from them; and it is sufficient that one of them was previously faithful, as commonly stated by Suarez, Layman, Ronc, Antonin, Salm, and Croix. Furthermore, just as it is permissible to baptize the children of heretics, even against their will, and even if they were to remain with their parents, according to the more probable opinion of Laym, Croix, Aver, Gob, etc., so it is not permissible to baptize the children of infidels against the will of their parents, and baptism is not valid in the following cases: 1. if the child is already capable of reason and expresses aversion, as taught by St. Thomas (1) 3. p. q. 67. a. 6. — (2) Lib. 6. n. 119. — (3) 3. p. q. 67. a. 6 ad 5. — (4) Lib. 6. n. 120. — (5) N. 121. — (6) N. 122. — (7) N. 124. — (8) Ibid. ad 6. — (9) N. 126. v. Quer.

[*Latin ed. p. 355*]

THOSE WHO MAY BAPTIZE. 343. It is to be noted that the Church can and ought to separate a baptized child from its parents, as stated by Castrop, Layman, Salm.; and Benedict XIV declared this, in the cited passage, number 29, from chapter De Judæis, dist. 45; and in the case where it is doubted whether the child requesting baptism is of the age of reason, it must be baptized after seven years; but it must be postponed until after seven years, as stated there by Benedict, and in the meantime, the child must be separated from its parents and kept in a safe place (2). 2. A child of non-believers must be baptized whenever there is danger of death. 3. If the child is outside the care of its parents, and there is no fear that it will return to them. The same applies to children who are perpetually loved by their parents, or who have been abandoned or exposed by their parents; 4. if the parents have been captured by Christians, or if the children themselves have been captured in war; 5. if one parent consents to the baptism of the child, even if the other parent strongly objects (3). 21. — But here the question arises: 1. Whether, if both parents are non-believers and object, it is permissible to baptize a child? The answer is that it is not permissible if the child will remain in their power, as decreed by the Holy See, because there is a certain danger of the child being perverted. But, on

the other hand, as Scotus, Flascius, Tournhemianus, Estius, Pichon, Mastrius, Holzmüller, and others argue against Gonet, Concilii Salmanticensis, etc., it is sufficiently probable that it may be lawfully baptized, provided that the parents cannot have a right over the children to the detriment of their eternal salvation; and just as a child can be taken away from its parents to be freed from bodily death, so much more can it be taken away to be freed from spiritual death. However, it should be noted that Julius II forbade the Jews, for just reasons, from baptizing their own children against their will, before they had reached the age of reason (4). 22. — The question arises: 2. Whether it is permissible to sell children who have not yet been baptized to non-believer parents? Hurtado denies this; but generally, Suarez, Layman, Castrop, Vasquez, Bonacini, Coninchus, Filliu, etc., affirm it, because this is conducive to maintaining peace; otherwise, non-believers would find it difficult to return Christian captives, and it is more important for the Church that the faithful maintain their faith, even if it is hidden, than that non-believers embrace it (5). 23. — It should be noted that, according to the general rule, in order to confer baptism conditionally, it is required that there be a rational and prudent doubt about the validity of the previous baptism, whether the doubt is negative or positive (6), as explained in volume 1, treatise 1, number 12. However, it should be noted that, if at least one eyewitness testifies to the baptism that was conferred, it cannot be repeated, unless there are contrary witnesses who positively state the opposite; this is generally the opinion of Suarez, Layman, Castrop, Bonacini, Holzmüller, Salm., etc., with Lambertini. It should also be noted that adults born of Christian parents and raised among the faithful should not be baptized (even conditionally), even if no one is present who can testify to their baptism, as is expressed in chapter 3 of the following section, De Presbyt. non bapt., where it is said: "And certainly, concerning one who was born of Christian parents, and who has been faithfully converted among Christians, it is so strongly presumed that he has been baptized, that the presumption should be held to be certain, unless it is proven by very evident arguments to the contrary." However, Layman and Busembach rightly state that baptism conditionally is (1) 3. p. 68, a. 1b. — (2) Lib. 6. n. 128. — (3) N. 129 ad 151. — (4) N. 152. — (5) N. 153. — (6) N. 134.

[*Latin ed. p. 356*]

344 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, etc. It is permissible to administer Baptism to adults, even among the faithful, when there are grounds to reasonably suspect that they may not have been baptized. Indeed, as Zacharias reports (1), the Sacred Congregation has repeatedly decreed that such individuals should be baptized, provided that there is no evidence that they have already received Baptism, nor any record of their parents' marriage (2). 24.—Note 7: Regarding infants (if they are presented for Baptism and have a record, or do not), they should be baptized

conditionally, whenever there is doubt about their Baptism, because it is always prudent to suspect that they may not have been validly baptized; thus, Nat. and Alexander, and the Councils of Petrocors, Ronc, Holzm, Tourn, Henno, and others with Lambert, state this, citing the Council of Milan and declarations of the Sacred Congregation in support, as well as the Roman Ritual, which states: "Infants presented for Baptism, if there is no certainty about their Baptism, should be baptized conditionally (3)." 25.—Note 8: Infants baptized by midwives or laypersons are only to be rebaptized if there is a reasonable suspicion of error, as commonly stated by Suarez, Laym, Bonac, the Council of Holzm, Salm, Croix, etc., regardless of what others may say; and this has been declared by the Sacred Congregation (4); otherwise, if a parish priest, after questioning the layperson, finds that he is sufficiently instructed, as stated in the Roman Catechism; in that case, however, the ceremonies must be completed in the church, as prescribed in the Roman Ritual. In the case of adults, when Baptism must be repeated, confession is not required beforehand, but only contrition (5). 26.—Note 9: Those baptized by heretics should not be rebaptized, unless it is certain, or at least reasonably suspected, that some essential element required by the Catholic Church for the validity of the sacrament was not observed, as declared by the Sacred Congregation (6). This is especially true of those baptized by Lutheran and Calvinist preachers, as noted by Tourn, Gob, and the Dicastery, etc.; for some of them use distilled water, others are accustomed to the practice of one person reciting the formula and another applying the water; some sprinkle the water only over the clothing; and others commonly fail in their intention (7). 27.—Note 10: It is sinful for a minister to fail to baptize (i.e., to administer Baptism conditionally) when there is a reasonable doubt about the validity of the Baptism. Conversely, if there is a single, credible witness to the administration of Baptism, it cannot be repeated (8). It is sufficient to have the condition in mind, provided that it is not concealed in a way that causes scandal; but it is always safer to express it: "If you have not been baptized, etc." And when Baptism is administered conditionally, a godfather is not required (9). 28.—Regarding the disposition required to receive Baptism, at least habitual intention is required in adults (because, as stated above, the Church supplies this for infants and children). Therefore, Baptism is validly conferred on one who receives it, not merely by force, but also with a serious desire, as is also the case with those who are loving or asleep, who previously requested it while they were in their right mind. 2. It is required that they be free from heresy, according to what is stated in volume 1, treatise 4, number 3. 3. Sorrow for sins is required; and attrition without predominant charity is sufficient, as commonly stated by Gonet, Can. Sot, Suarez, Valent, Salm, and others with St. Thomas (10), who says: "(r) Lib. 4. apud Croix, 1. 6. p. 1. n. 520. — (2) Lib. 6. n. 134. v. flie tamen. — (3) N. 155. — (4) Apud Zacch. Adnot. ad Croix 1. 6. p. r. n. 323. — (5) Lib. 6. n. 136. — (6) Apud Zacch. ad Croix 1.

6. p. r. n. 323. — (7) Lib. 6. n. 137. — (8) Ibid. — (9) Ibid. in fn. Resp. 2. — (10) In 4. d. 6 q. r. a. 5 ad 5.

[*Latin ed. p. 357*]

OF GODPARENTS AND THEIR OFFICE. 345 » In baptism, grace is conferred, but faith, not charity, is required; for contrition, though not perfect, suffices (1). » 29.—The ceremonies that ought to be observed in baptism are: 1. consecrated water, because baptism is a solemn rite, as stated in number 8. It would be a grave sin for someone to baptize without necessity, omitting the unction with chrism and the oil of catechumens, or to anoint with old oils, as the common doctors teach from canon law. If someone, however, has only another oil available, and it cannot be consecrated, then a simple olive oil may be used in a smaller quantity, as stated in Dist. 4 and the Roman Ritual. Therefore, if new oil cannot be obtained within a reasonable time, e.g., 10 or 11 days, then baptism may be conferred, and the unctions performed afterward; and this is permissible even if there is no strict necessity: « For, as the Ritual says concerning infants, because of » their extreme weakness, « they are exposed to » almost « infinite dangers in life. » But if there is no necessity, or another serious reason, and new oil can easily be obtained within that time, then baptism should be postponed (2). 30.—II. Baptism should be conferred in the church; therefore, it is grave to confer it at home. Exceptions are: 1. if the infant is the son or daughter of a king or prince, as stated in number 18; 2. if the infant cannot be brought to the church without causing shame to the parents, or exposing them to another grave danger; and in that case, Croix, Gobinus, and Jordanes say that baptism can then be conferred at home, even solemnly; 3. if the infant is in imminent danger of death, e.g., if the mother has given birth with great difficulty; or if the infant does not cry, or is 7 or 8 months old (3). However, in this third case, if the infant is alive, the ceremonies should be completed in the church, as Saint Thomas says (4), in c. 1, de Sacramentis non iterand. And this is considered a serious matter, as held by Pignatelli, Croix, and Averani against Passerini (5). Whether, for example, if baptism has been administered invalidly, the ceremonies should be repeated; some commonly deny this, such as Suarez, Bonaventure, and Busembach, etc.; but others affirm it, such as Saint Antoninus, Castrén, and Salmeron. Both opinions are probable, and therefore the second should be followed as the safer course (6). The Ritual warns pastors to take care, as far as possible, not to give infants names that are likely to cause laughter, or the names of idols, or of idolaters, but rather the names of saints. It should be noted here that a complete record of baptisms should be kept, for the sake of faith in every tribunal; therefore, the Ritual also instructs pastors to note the date and hour of birth, the names of the parents of the infant, and the godparents; also, whether the baptism was conferred under a condition, or without ceremonies; and also, if the infant was exposed, and where it was

found (7). III. Godparents are required; but this will be discussed in the following section. SECTION III. OF GODPARENTS AND THEIR OFFICE. 31. The office of godparents. — 32. Qualifications. — 33. When and by whom is spiritual kinship incurred, etc. — 34. Can parents be godparents, etc. — 35. Must godparents be designated. — 36. Of what sex. — 37. Who are forbidden to be godparents. — 38. When does the pastor sin in this matter? 31. — GODPARENTS are those who receive the baptized from the sacred font, and take him into their care; therefore, they should instruct him in matters of faith and morals, if others neglect to do so. However, Saint Thomas says (8), that godparents can presume that the infants are sufficiently instructed by their parents (9). (1) Lib. 6. n. 159. — (2) N. 141. — (3) N. 142. — (4) 3. p. q. 71. a. 3 ad 3. — (5) Lib. 6. n. 144. — (6) Lib. v. Si Baptismus. — (7) N. 145. — (8) 3. p. q. 67. a. 8. — (9) Lib. 6. n. 147.

[*Latin ed. p. 358*]

346. TRACTATE XIV. ON THE SACRAMENTS IN GENERAL, etc. 32.— It is stated by Salm, Laym, Sanch, Nav, and others, that for one to be a godfather, no specific age is required; however, Croix likely holds that at least the age of 7 years is necessary. Certainly, however, it is required that one: 1. possess the use of reason; 2. be baptized; 3. have the intention of being a godfather; 4. either personally, or through a procurator, receive the baptized infant, or receive him from the hands of the baptizer; and in this, a moral touch is not sufficient, but a physical touch is required, according to the most common opinion of Sanch, Castrop, Bonac, Salm, and others, with the declaration of the Sacred Congregation (1); 5. that the godfather be designated by the parents, or at least by the parish priest; but the parish priest (at least lawfully) cannot change the godfather designated by the parents (2).

33.—It is questioned: 1. Whether, in a private baptism, spiritual affinity is contracted by both the baptizer and the godfather? Regarding the baptizer, there is no doubt that it is contracted. But regarding the godfather, it is commonly and probably held by Sot, Sanch, Castrop, Bon, Tourn, Salm, and others (against Suar, Laym, and others), because, according to the 24th session of the Council of Trent, chapter 2, concerning impediments, an impediment is contracted only by those who receive the child from the sacred font; and this font is instituted only for a solemn baptism, and not for a private one (3). It is questioned: 2. Whether spiritual affinity is contracted by one who is used as a godfather in a baptism under the condition of having been baptized previously? It is answered that if there is only a negative doubt about the previous baptism, then it is certain that affinity is contracted; for when there is no reason to value the previous baptism, the presumption holds for the validity of the subsequent one. Otherwise, if there is a positive doubt about the previous baptism, namely, a probable reason for its validity; thus, Sanch, Dian, and Ren (4). It is questioned: 3.

Whether affinity is contracted by one who, through error, receives one child instead of another whom he intended? Sanch, Tourn, and others, deny this, from chapter 2 on Spiritual Affinity, where it is said that a woman, who through ignorance receives her husband's child in baptism, is not deprived of the right to ask for the due [marriage rite]. But Pont, Castr, and others, more probably affirm this, provided that the godfather does not have an express intention of not receiving the other infant that he intended. And it is answered to the contrary text that there, the law removes the impediment to asking for the due [marriage rite], because it would not be just to deprive the spouse of her right; but this reason does not apply in our case (5). It is questioned: 4. When someone receives a child in another's name, who of them contracts affinity? Some say that only the procurator contracts it; thus, Sot, Conc, and Tolet. Others say that neither does; thus, Filiuc, Sa, and others, but the most common and truer opinion of Sanch, Castrop, Fagn, Nav, Tourn, Croix, and others, with Pontius, who cites the decision of the Sacred Congregation, is that only the principal contracts it; because, according to the Council of Trent, he contracts affinity who was designated by the parents to receive the child. It does not matter that the principal is absent, because, according to the rule of law: "He who acts through another, appears to act through himself" (6).

34.—It is questioned: 5. Whether the parents who baptize, or those who receive the child from baptism, contract an impediment to asking for the due [marriage rite]? It is certain 1. that they do not contract it if they baptize out of necessity, as the common doctors teach, along with St. Thomas (7). It is certain 2. that the parents sin gravely who baptize their children without necessity (8). It is certain 3. that the parents do not contract it who baptize their child out of ignorance, from chapter Si vir, 2, on Spiritual Affinity. The question therefore remains whether the parents who baptize their child without necessity contract an impediment. (1) Lib. 6, n. 148. (2) N. 146. (3) N. 149. (4) N. 151. (5) N. 152. (6) N. 153. (7) Suppl. q. 56, a. 1, and from c. Ad limina, 30, q. 1. (8) From c. De his, 7, q. 1.

[*Latin ed. p. 359*]

OF GODPARENTS AND THEIR OFFICE. 347. Is there an impediment, etc.? Sanchez, Petrocchi, and the Council, along with St. Thomas (1), assert that the same law which prohibits a relationship from being contracted between the one who baptizes and the parents of the baptized, also creates an impediment between the parents who baptize the child. However, Suarez, Roncaglia, Viva, and Salm, along with the Glossa in the aforementioned chapter 2, paragraph 2, "Debitum," reasonably deny this, because it is not expressly stated in any law, and no penalty is incurred unless it is expressly stated in the law, as all agree; indeed, the same text states that such spouses are not to be separated; and it is added: "Neither should either subtract anything due to the other." It is not valid to say that the text speaks of giving,

and not of asking, because if one could not ask, the other would not be obligated to give; for he has lost the right to ask (2). 35. It is questioned (6) whether godparents, in order to contract a spiritual relationship, must be designated, and by whom? Regarding this, the Council of Trent, Session 24, chapter 2, states: If others, besides those designated, touch the baptized, no spiritual relationship is contracted by any means. It is doubted (1) whether, if many touch the child, but none are designated, all of them contract a relationship? Some say that none of them contract a relationship; thus, Croix, Gobius, Dian, etc. But I adhere to the contrary opinion, which is the most common, according to Navar, Laym, Castrop, Bonac, Salm, Viva, etc., with the declaration of the Sacred Congregation, which stated that all contract a relationship, because although the Council requires that the parish priest baptize, using designated godparents chosen by the parents of the child, it does not invalidate the ancient law, chapter 6, concerning spiritual relationships, which states: "If more than one approach, a spiritual relationship is thereby contracted," and this applies, as Castrop, Cornaro, Salm, etc., say, even against Croix, even if designated godparents are present. But if one of the designated godparents touched the child, the others who are not designated certainly do not contract a relationship, as is stated in the Council. But if the parents were to designate more than two godparents, and all of them touched the child (in which case the parish priest would gravely sin by admitting them, contrary to the Council's precept), then Suarez, Sanchez, and Croix correctly say that if they touched successively, the first two would contract a relationship, but if they all touched at the same time, Suarez holds that none would contract a relationship, but it is more probable that Sanchez, Roncaglia, Castrop, Salm, Croix, etc., say that all the designated ones would contract a relationship, because the Council does not invalidate the ancient law, unless others who are not designated, besides the two designated, touch; but it is different if others who are designated, beyond the two, touch. And this applies all the more, as the Sacred Congregation declared, if it is not known which of many designated touched first (3). 36. It should be noted (1) that the Council prescribes that of the two godparents, one must be male, and the other female, so that it would not be permissible to designate two males, or two females; and I believe it is lethal, along with Bonac and others (against Sanchez and Croix), if both godparents were of a different sex than the child, because in this way the relationships would be multiplied contrary to the purpose of the Council, and this is a serious matter. But if only one godparent were designated, it does not matter whether he is of a different sex, as Suarez, Filliu, Gobius, and Aversa reasonably say (against Laym), since the Council says "whether male or female" (4). 37. It should be noted (2) that it is not permissible for monks and nuns, and for religious of any order, to be godparents, as the Roman Ritual declares (title on godparents in baptism), stating: "Monks and religious, nor others of any order, who

are separated from the world, should not be admitted."

[*Latin ed. p. 360*]

348 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, etc. It is understood here that this pertains to the *receiving* of the sacrament, and not to the act of baptizing. II. It is forbidden for heretics, apostates, and infamous persons to act as godparents. Therefore, those who present heretics as godparents for their children sin. Conversely, Catholics may lawfully receive children of heretics into the faith at baptism, provided that their rites are not manifestly disapproved of. Laym., Croix, Gob. (1). III. It is forbidden for a husband to be the godfather of his wife's child; and for parents, with respect to their children, except in cases of necessity. IV. It is forbidden to have more than two godparents, as the Council of Trent, Session 24, chapter 2, declares: "Whether man or woman, let there be at most one man and one woman." It is not forbidden for two spouses to act as godparents for the child of another, as the Doctors commonly teach, including St. Thomas (2), who says: "Nothing" prohibits a man and his wife "from taking up from the sacred font any child." (3). 38. — Note: It is sinful for a parish priest 1. if he refuses godparents designated by the parents, or if he admits those not chosen by them; 2. if he admits more than two; 3. if he baptizes without a godfather (4). However, in private baptisms, there is no obligation to have godparents, according to common opinion; furthermore, it is probable that godparents can also be lawfully used in private baptisms (5). CHAPTER III. ON CONFIRMATION. 39. Concerning the matter. 40. Whether the chrism must be blessed, and whether it can be administered by a simple priest, etc. 41. Concerning the matter proper, and whether it is the extension of hands used by the bishop, etc. 42. Whether by the right hand or by an instrument, etc. 43. Concerning the form. 44. Concerning the minister. Whether a simple priest can administer it. 45. What if an outsider is to be confirmed. 46. Concerning the obligation of administering Confirmation. 47. Concerning the obligation of receiving it. 48. Whether those who receive orders, etc. 49. Whether for the sick and infants, etc. 50. Concerning the ceremonies. 51. Concerning the godparents. 52. Concerning other ceremonies. 53. Concerning the effects of Confirmation. 39. — WE HOLD with certainty that Confirmation is a true sacrament, as is stated in the decree of Eugene IV in the instruction to the Armenians, and in the Council of Trent, Session 7, chapter 1. This is proven by the tradition of the Fathers. We now state what is relevant to know about the matter, form, minister, necessity, and ceremonies of this sacrament. And I. Concerning the matter. The matter of Confirmation is the chrism, made from balsam and oil, blessed by the bishop, in distinction from the oil of baptism and of the sick, as Junius III distinguished in chapter "When it has come," on the Sacred Unction. Whether one of these oils is a valid matter for another sacrament, Suar., Laym., and Henriq. deny, but Bell.,

Castr., Bonac., and Barb. more probably affirm (6). However, there is no doubt that oil is necessary for the sacrament's necessity. Balsam is certainly required by the precept; but whether it is necessary for the sacrament's validity, Sot., Nav., Juven., Cont. Tourn. deny from chapter "Pastoralis, on sacraments not iterated," where Junius III, when asked whether chrism given with only oil was valid, replied: "Nothing is to be iterated, but what has been carelessly omitted should be carefully supplied." (7). However, Bellarm., Gonet., Petrocor., Conc., and others, along with St. Thomas (7) and with the Roman Catechism, page 2, number 7, more probably and commonly affirm. And it is proven in chapter "unic." on Sacred Unction, where the pontiff calls this sacrament the chrismation: not certainly for any other reason than because of the chrism which is made from oil and balsam. Furthermore, it is proven from the decree of Eugene IV, in the Florentine Council, where it was said (1) Book 6, number 156. — (2) In 4th, d. 42, q. 1, art. 3, q. 2, ad 4. — (3) Book 6, number 157. — (4) Number 154, v. But note. — (5) Number 159. — (6) Number 162. — (7) 5th, p., q. 79, a. 2.

[*Latin ed. p. 361*]

ON CONFIRMATION. 349. The matter of Confirmation is the chrism, made from oil and balsam. Habert objects that this decree was not of a council, but was issued after the council, due to the departure of the Greeks. But Petrocorens responds: 1. that the Greeks themselves agreed to the continuation of the council, so that the Armenians might also be united to the Church; 2. that such a decree was accepted by all Catholic churches. But we respond better, saying that the Pope, teaching dogma and speaking as the Doctor of the Church, makes all his definitions infallible by their very nature, as we explain more fully in Volume 1, section 1, number 110. It is answered to the objection that in the text cited, the Pope said nothing was to be repeated, because, as the Glossary says, "It is not said that something is repeated, if it was not done before." Furthermore, the first opinion is probable, as can be seen in the decree of the Sacred Congregation, apud P. Ferraris (1), since it is certain that Confirmation without balsam is at least doubtful, and therefore should at least be repeated. Balsam of any region suffices (2). 40. The chrism must be blessed by a bishop out of the necessity of the precept; but is it also necessary for the validity of the sacrament itself? The Council of Trent, Salm, and St. Thomas (3) affirm this, citing the aforementioned decree of Eugene, in which it is said that the matter of Confirmation is the chrism blessed by a bishop. But, speaking speculatively, the opinion of Cajetan, Barbatus, Gottschalk, Juvenal, Tournhem, etc., is probable, because, just as the Pope can entrust the power to confirm to a simple priest (as we will say, number 44), so too can the power to bless the chrism be granted; but the decree of Eugene proves nothing beyond the necessity of the precept. We say this speculatively, because in practice, when the value of the sacrament is at stake, the first opinion must be held

(4). However, the precept is grave, as stated in the canons of the Council of Trent, distinct 3, that the chrism blessed more than a year ago must not be used. But the Pope can dispense from this precept of the Church, as Pope Benedict XIV did in Constitution 10 (5). Therefore, there is no doubt that Confirmation conferred with old chrism is valid (6). 41. The material for Confirmation requires 1. an unction on the forehead, 2. in the form of a cross, 3. by the hand of the minister; and these three are all essential to the sacrament, as the Doctors commonly teach (7). But since it is said in the Pontifical that the bishop should say a prayer before anointing, extending his hands towards those to be confirmed, many modern authors, Merbecq, Tournhem, Gonet, Juvenal, Gottschalk, etc., believe that such an extension is of the value of the sacrament, because it is read in the Acts, chapter 8, verse 12: "Then they laid their hands upon them: and they received the Holy Ghost." But it is more commonly denied by Suarez, Layman, Petrocorens, Frassen, Antoine, Holzmüller, Viva, Croix, and others, with P. Berti, who defends our opinion extensively (8). And we say that the extension of the hands used by the bishop in anointing with chrism is sufficient. This is proven by the decree of Eugene, in which it is said: "In the Church, the imposition of hands is given in place of the imposition of hands; and more clearly in chapter one, section 3, on the sacrament of unction, where the pontiff said: 'By the anointing of the forehead, the imposition of hands is signified, which is called Confirmation by another name.' Therefore, the Pope is certain that the imposition of hands is already present in the same anointing. For the Pontifical does not say 'upon those to be confirmed,' as it would have said if it meant to speak of the imposition of hands; but as it says, speaking of ordination, both the pontiff and (1) Ferraris, Bibliotheca, v. Confirmatio, art. r., n. 10. (2) Lib. 6, n. 162. (3) 3 parts, question 72, a. 3. (4) Lib. 6, n. 163. (5) Bullarium, ed. Mechl., vol. 1, p. 54. (6) Lib. 6, n. 163 ad 3. (7) N. 164. (8) Berti, de Theologia Disputationibus, 1, 32, c. 4, resp. ad 1.

[*Latin ed. p. 362*]

350 TRACT. XIV. ON THE SACRAMENTS IN GENERAL, etc. The priests extend their right hands over those to be confirmed; but the words recited during the ceremony signify nothing other than the customary rite prescribed by the Church to its ministers when reciting these prayers; for extending the hands is the same as opening them and raising them. Therefore, the opposing opinion lacks a solid foundation; and I merely mention it as something to be considered with caution. A bishop who wished to put it into practice could (as Habert points out) divide those to be confirmed into different groups, and then recite the aforementioned prayer for each group (1). 42.—The bishop must anoint with the thumb of his right hand; therefore, he would sin if he anointed with his left hand; and, according to the common opinion, this is a serious matter; but

Escob. Trull. Nugnez, Dic. Aver. Diana and Tamb. believe that this may not be a mortal sin, and indeed, it is not certain that this ceremony is a grave matter. Therefore, these authors probably say that the bishop could lawfully confirm with his left hand if he could not use his right hand (2). However, the opinion that confirmation can be administered (as can Extreme Unction) by some instrument is rightly rejected by the common opinion; because then the imposition of hands, which is otherwise not necessary in Extreme Unction, would be lacking. As for the quantity of chrism, it is sufficient if there is enough to anoint the forehead in the form of a cross; thus say Suar. Castr. Bon. and Salm. (3). 43.—II. Regarding the form, there are four opinions; 1. Those who believe that only the bishop's extension of hands, which precedes the anointing, is the sole matter of confirmation, say that the only form is the prayer recited by the bishop at that time; 2. Others, who believe that both the initial imposition of hands and the anointing itself are partial matters, say that the form consists both of the aforementioned prayer and of the words that the bishop says during the anointing: "Signo te signo Crucis, and I confirm you with the chrism of salvation; In the name of the Father, etc."; 3. Others believe that the matters are partial (as stated), but that the form is one, namely, that which is said during the anointing; 4. Finally, others, who rightly hold that the entire matter is the anointing, which includes the imposition of hands (as we said), say that the entire form is the words "Signo te, etc.," which accompany it; thus say the common doctors, along with St. Thomas (4), and with the Roman Catechism on confirmation, part 2, no. 9, where it is said that the authority of the Catholic Church... does not allow us to doubt anything about this matter. And indeed, Pope Eugene IV declared this, who in the aforementioned decree said: "The form is: Signo te signo Crucis, etc." (5). Angelicus explains (6) that by "Signo te" it is signified that the person is marked as a soldier of Christ; by "I confirm you" it is indicated that he receives the strength to fight; and finally, by "In the name of the Father," it is indicated that he receives this strength from Him. (7). The form of the Greeks is "Signaculum doni Spiritus sancti" (the seal of the gift of the Holy Spirit); which is also valid, as declared by Urban VIII (8). 44.—III. Regarding the minister of confirmation, it is certain that only the bishop is the ordinary minister of this sacrament, as declared by the Council of Trent, session 7, canon 3: "If anyone says that the ordinary minister of the holy sacrament of confirmation is not only the bishop, but any simple priest, let him be anathema"; but, by the concession of the pope, it is also certain that (1) Lib. 6. n. 164. — (2) N. 165. — (3) N. 166. v. Dicunt. — (4) In 4. d. 7. q. 1. a. 3. solut. q. 2. — (5) Lib. 6. n. 167. — (6) 3. p. q. 72. a. 4. — (7) Lib. 6. n. 168. — (8) N. 169.

[*Latin ed. p. 363*]

OF CONFIRMATION. 351. It is the opinion of some that the minister of

Confirmation can be a simple priest, as declared by Benedict XIV in his Constitution *Eo quamvis* of May 4, 1745. And previously, both Eugene IV and St. Gregory the Great exercised this power (1). However, whether a bishop can delegate this power to a simple priest to administer Confirmation is a question that has been debated, as noted by Benedict in his renowned work on Synods (2). There are strong arguments on both sides of this issue; however, it is now generally held that this power is reserved solely to the Supreme Pontiff, both by custom and by the express reservation made by Nicholas I (Epistle 70). Although Confirmation is an act of the episcopal order, the value of which does not depend on the will of the pontiff, the exercise of this act does not pertain to the order itself, but to the jurisdiction, which can be properly limited by the Pope, just as the power of bishops to grant dispensations in the five matters reserved to the Apostolic See is limited. 45. It should be noted that 1. A bishop who confirms the subjects of another diocese does not sin gravely, nor does he incur suspension from his office, even if he were to confirm the subjects of his own diocese, as declared by the Sacred Congregation and the Council of Trent, Session 6, Chapter 5. However, if he were to confirm the subjects of another diocese without permission, it would be illicit. However, it is presumed (according to commonly accepted usage) that there is a tacit consent from the other bishops, provided that there is no contrary will from any of them; thus, say Castrop, Laym, Salm, Sa, Croix, etc. This is even more true if the bishop were to confirm someone who is to be ordained, and who comes to him with letters of dismissal from his own ordinary; for then his consent is presumed even in this case, as commonly stated by the aforementioned authors and others (3). 46. It should be noted that 2. A bishop gravely sins (according to common opinion) if he neglects to administer Confirmation to his subjects for a long time, for example, for eight or ten years, as stated by La Croix and the Dicastery; therefore, a bishop is obligated to visit his diocese, at least the principal towns of the diocese, unless he is morally unable to do so; and he must do so at his own expense, unless there is a just custom to the contrary; say Castrop and Salmant. St. Bonaventure holds that a bishop is obligated to confirm even those who are dying and who request it; but it is probable that he is excused from this obligation by Lugo, Escob, Croix, Salm, etc., both because of the grave inconvenience that it would cause and because of the practice that has developed in this regard (4). 47. Regarding the necessity of this sacrament, some say that everyone is obligated to be confirmed, because otherwise they would suffer great harm by depriving themselves of the strength to resist temptations that this sacrament provides; thus, say St. Bonaventure, Merbes, Tourn, Conc, Habert, etc. However, many more commonly deny this grave obligation, saying that Sot, Navar, Suar, Laym, Fras, Wig, Castr, Bon, Anacl, Salm, Croix, etc., because it is not certain that there is a grave precept, either natural or positive, regarding this matter. Scotus holds the same opinion

(5), who, speaking of Extreme Unction and Confirmation, says: "Neither is simply necessary, nor is there a precept regarding either." St. Thomas also holds the same opinion (6), who says that Confirmation is necessary not for salvation itself, but for the perfection of salvation; elsewhere, he later explicitly states (7) that there is a danger of departing from life without this sacrament, "not because one would be condemned (unless perhaps due to contempt)," but because one would suffer damage to one's salvation." And finally, it appears that (1) Lib. 6. n. 170. — (2) Lib. 7. c. 8. n. 3. — (3) Lib. 6. n. 171 et 172. — (4) N. 175. — (5) In 4. d. 17. q. 1. n. 121. — (6) In 4. d. 7. q. 1. 2. 1. q. 2. — (7) 3. p. q. 72. n. 8 ad 4.

[*Latin ed. p. 364*]

352. TRACT. XIV. ON THE SACRAMENTS IN GENERAL. The Council of Trent, in its Catechism for the Roman Church, number 14, states that the Church desires that all the baptized receive this sacrament. However, the Church's desire is not a command. Nevertheless, the primary opinion must be maintained, as decided by Benedict XIV in the bull *Etsi Pastoralis*, concerning the rites and dogmas of the Greeks, in 1742, where (§ III, n. 4) the following is stated: "Those who have not been confirmed should be reminded by the local ordinaries that they are subject to the guilt of a grave sin, if, when they are able to receive confirmation, they refuse or neglect to do so." 48. Bonaventure, Tolet, Renzi, and others argue that those who are initiated with the first tonsure without having received confirmation commit a grave sin, because the Council of Trent, session 23, chapter 4, states: "The first tonsure shall not be conferred upon those who have not received the sacrament of confirmation." Renzi cites a certain declaration of the Sacred Congregation, in which it was stated that a tonsured man who has not received confirmation cannot advance to other orders, nor can he receive benefices without the dispensation of the Pope. However, many, including Soto, Castresano, Azorín, Escobar, Valentia, Salmerón, and Cabassá, along with Navarret, Suárez, Concílius, and Victor, among others, argue the same regarding other orders, and they respond to the Council that commands issued simply in an imperative manner do not necessarily impose a grave obligation, unless other circumstances are present, as Cajetan, Navarret, and others state, and according to what is said in volume 1, treatise 2, number 15 (1). Furthermore, it is sufficient that one is probably confirmed in order to be excused from such an obligation, as Benedict XIV (2) states, citing a declaration made by the Synod of the Maronites, convened by Gregory XIII. 49. Many authors, such as Bonaventure, Escobar, Holzmüller, Salmerón, and others, state that conferring confirmation on infants before the age of seven is not blameworthy. This was an ancient custom, and it is still practiced by the Greeks today; and as Vivaldus states, in Spain, children are often confirmed at the ages of two and three (3). However, this cannot be said now, since Benedict XIV, in Constitution 129, § 6, issued

in 1745 (see in the Bullarium of the same volume, 1), declares that it is now not permissible to administer the sacrament of confirmation to anyone unless they have attained the use of reason, with these words: "Nevertheless, the Roman Church has completely abolished... such a practice, and, by the most prudent decrees of the pontiffs, it is provided that the sacrament of confirmation be conferred only at that age in which the faithful understand the difference between baptism and confirmation, just as there is a difference between generation and increase." Nevertheless, the same Benedict, many years later, when he was Pope, in his work on the Synod (4), states that although the catechism indicates that it is not necessary to confer confirmation before the age of seven, it does not prohibit its being conferred on children who have not yet reached that age in certain cases. The author adds that Sylvius, Suárez, Sylvester, Roncaglia, Juvenius, Gotti, and others, noting this, state that it is permissible, even according to the present discipline, to confer confirmation on children before the age of seven for some reason, such as if the bishop were to remain for a long time outside the diocese, or if the child were in danger of death, or for other reasons. And, always attentive to the needs of the people, he states that it is absolutely possible to administer the sacrament of confirmation to them (5). 50. Finally, concerning the ceremonies, 1. sacred vestments are required, namely (as prescribed by the pontifical) the amictus worn over the rochet or over the cotta.

[*Latin ed. p. 365*]

OF CONFIRMATION. 353 If the bishop is a regular cleric, then the stole and cope should be white. And the bishop would sin gravely if he were to administer Confirmation without any of these vestments, but not so if he were to omit one of them, as Spor, Ren., Tambur, and Diana state; also, a staff and mitre are required; but the staff suffices if it is displayed in some place, or if it is held by some cleric, as is shown in the figure opposite in the Pontifical; and with regard to the mitre, as the Sacred Congregation declared, it suffices if the bishop uses the stole; therefore, it is not necessary for him to use the mitre (1). 2. A candle is required, and the bishop should give the *alap* after the words of the formula to the confirmed; but the omission of these things does not constitute a venial sin (2). 3. It is required that the sacrament be administered in a church; but this is not a matter of grave importance, as the common doctors teach (contra Nugnez). Indeed, Sutr., Bonacin., Barbos, Sa, Henriq., etc. (3), excuse the bishop from all guilt if he were to administer Confirmation in some suitable place. Nevertheless, I do not know how to excuse him from a venial sin, unless some circumstance intervenes; for, according to custom, this sacrament is administered in a church, as even Bon. and Barb. concede, because of what is read in the Pontifical: "This sacrament can be conferred less solemnly on any day, hour, and place, at the discretion of the bishop." Note that, although it

is said "at the discretion," a reason is required. However, the bishop can always licitly administer Confirmation in a domestic chapel, as Castrop correctly states (4). 4. Fasting is required both for the one who administers and for the one who receives Confirmation, according to canon 1 of the Decree on Fasting, Dist. 5, and also according to the Pontifical, where it is said: "Those who are to be confirmed should be fasting." But the common doctors generally say that this is a matter of counsel, not a precept; hence, the custom has prevailed of administering this sacrament even after a meal; thus, Laym., Castr., Conc. Salmant., Cabass., Croix, etc. (5); and likewise, according to custom, it is licit today to administer this on any day, whether festive or weekday; Suar., Granad., Busemb., Salm., etc. (5). 51.—Required. 5. A godfather is required by the parents of the child, or, in their absence, by the bishop; and this is undoubtedly a matter of grave importance, whenever it can be obtained; but if it can never be obtained, Holzm., Gob., and Illsung. state that Confirmation can licitly be conferred without a godfather. Hence, the godfather 1. must be one person, as commonly held by Castrop, Bonac., Rebell., Salm., and Busemb. (contra Toletum, who admits two), since it is decreed in chapter fin. de Cogn. Spir. that, for both Confirmation and Baptism, there should be only one godfather. It is true that this rule was established both for Confirmation and for Baptism, but the Council of permitted two for Baptism, but not for Confirmation; hence, the ancient right remains valid in this regard. 2. Hence, the godfather must be one who has been confirmed, as is prescribed in c. In baptismate 102. d. 4, where it is said: "In Baptism, or in the anointing with chrism, no one can receive another as a godson, who is not himself baptized, or confirmed." And in the Pontifical it is said: "No one who is not confirmed can be a godfather in Confirmation" (6); and this is also a matter of a grave precept, as the Council correctly states with the common doctors (7). If, however, an unconfirmed person were to act as godfather in Confirmation, Sot., Navar., Sa, and others also say that he would incur a bond of obligation, citing the words quoted above, and arguing that the text does not denote the validity of the act, but only a prohibition; and this opinion is rightly called probable by Salm. and Croix. But it is more probable that the Glossa in (1) Lib. 6. n. 184. — (2) Ibid. v. Notand. II. — (3) Barbos. de Pot. Episc. 2. p. All. 30. n. 25. et Salm. Tract. 5. c. 4. n. 32. — (4) Lib. 6. n. 184. v. Notand. III. — (5) Ibid. Notand. IV. — (6) N. 185. — (7) N. 186.

[*Latin ed. p. 366*]

354 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. The aforementioned text is cited by Suarez, Tollet, Sanchez, Bona, Renz, and many others; and Renz also adduces a declaration of the Sacred Council. For, as Sanchez demonstrates, the word "not" in that case renders the entire act invalid (1). 3. In Confirmation, there must be a godfather distinct from the godfather of Baptism, according to the common opinion; La Croix, with

Sylvester and the Council of Cologne, makes an exception, unless there is a reason to the contrary. 4. In Confirmation, according to the Pontifical, the godfather must be of the same sex as the one being confirmed. 5. The godfather should not be a religious, as Sanchez, Bona, Salm, and others commonly state, according to canon 104 of the Monachi, in the distinction on consecration, where it is said: "Monks should not act as godparents to their companions or to those related to them." Castrop, Barb, Gobat, Spor, and others make an exception if the one being confirmed is also a religious; Suarez, in the Decrees, makes an exception if the godfather is of a mendicant order; but Father Concina rightly objects, as was reported in number 37, that this prohibition already exists in the Ritual, which forbids any religious from being a godfather; it is true that it speaks of Baptism there, but the same principle applies to Confirmation; and as we said above in treatise 2, number 78, in cases of ambiguity, the law is extended from case to case, so that if the law were not extended, the legislator would be considered either unjust or imprudent. Regarding the manner of receiving Confirmation, according to the Pontifical, the one being confirmed should place his foot upon the right foot of the godfather; but Father Concina rightly states that today, according to the custom received and approved by the Sacred Congregation of Rites on September 20, 1749, it suffices for the godfather to place his right hand upon the right shoulder of the one being confirmed (2). 52. — It is required, according to the Pontifical, that after the unction, the forehead of the confirmed be encircled with a ribbon; but today, this ceremony has become obsolete in our regions, since, after the unction is performed, the forehead of the confirmed is immediately wiped and he is dismissed. 7. The parish priest must note the names of the confirmed and their godparents in the book, so that the kinship contracted may be known, and also for the purpose of recording their reception into the order. Barb and others state that the name can be changed in Confirmation. After the function is completed, the bishop blesses the confirmed, and therefore, while confirming them, he warns them not to leave before the blessing: but Tambur states that this warning is not obligatory; and indeed (as Croix says), it is the practice that the confirmed, having received the sacrament, depart, and the bishop does not obligate them to wait (3). 53. — The effects of this sacrament are three: 1. a character; 2. grace, namely, the spiritual strength received to combat enemies; 3. spiritual kinship, which is contracted between the confirmed and the godfather who receives him, and between him and the parents of the confirmed (4).

TREATISE XV. ON THE SACRAMENT OF THE EUCHARIST. CHAPTER I. ON THE ESSENCE OF THE EUCHARIST. 1. What constitutes the essence of the Eucharist, and what is its specific nature: and from where is its unity derived? — 2. Is the necessity of the elements essential? — 3. Is consecration in a single species illicit and invalid? It is not permitted to consecrate in a single species alone. — 4. Exceptions. (1) Book 6, number

186, Doubt 2. — (2) Number 197. — (3) Number 188. — (4) Number 169. V. But there are three.

[*Latin ed. p. 367*]

OF THE ESSENCE OF THE EUCHARIST. 355 → 5. The Effects of the Eucharist. — 6. How long do the species last, etc. — 7. He who communicates with a mortal sin. — 8. Other matters are discussed in Appendix III, on Examination, no. 96. 1. — THE EUCHARIST IS DEFINED: "It is the sacrament of the body and blood of Christ, under the species of bread and wine, instituted by God for the spiritual nourishment of the soul." Many questions are raised by the scholastics concerning the sacrament of the Eucharist. We have discussed these more fully in this work, and here we merely mention them. It is asked: 1. In what does the essence of the Eucharist consist? Some say that it consists in the species of bread and wine, and that the person of Jesus Christ is only present in it indirectly, as something externally signified. Others say that it consists essentially, both in the species and in the body of .Christ. Both opinions are probable; observe the reasons (1). It is asked: 2. Can the entire specific nature of this sacrament be preserved in either species alone? Some affirm; but it is more probable that it cannot be preserved except in both, since in either one (speaking by itself) it cannot signify the complete nourishment of food and drink (2). It is asked: 3. From what is the numerical unity of the sacrament of the Eucharist derived? Some say from the unity of the body of Christ; but others more probably hold that it is derived from the moral conjunction which the consecrated species have with each other, since they are presented or taken as one (3); but if they are presented in different altars, or received by different persons, they are different sacraments (4). 2. — It is asked: 4. Is the Eucharist necessary by divine or ecclesiastical law for salvation? There is no doubt that it is necessary by ecclesiastical law, as is stated in the words of St. Luke, chapter 22, verse 19: "This do ye, in commemoration of me." Moreover, it is also established by all that the Eucharist is not necessary by divine law with regard to actual reception. Therefore, it remains doubtful whether it is necessary by divine law, at least in intention, that is, by desire? St. Bonaventure, Suarez, Cajetan, etc., deny this, asserting that this sacrament is not instituted to produce the first grace. But it is more probable that St. Thomas (5), Soto, the Council of Salm, etc., affirm this; first, from the text of St. John: "Then Jesus said to them. Except ye eat the flesh of the Son of man, and drink his blood, ye have not life in you," chapter 6, verse 54; and secondly, because the Eucharist is the end of all the sacraments; therefore, no one has grace before the reception of this sacrament, unless by his own will, as adults have after baptism, or after receiving the sacrament of penance; or by the will of the Church, as children have (6). There is no doubt that the reception of the Eucharist, either in reality or at least in intention, is necessary for the preservation of

spiritual life; this is commonly taught by Soto, Gonzalez, and Salm, with St. Thomas (7); for just as the life of the body cannot be preserved without material food, so neither can the life of the soul. Therefore, Lugo, P. Soto, Vall, Fill, Salm, etc., say that although the precept imposes only that one should communicate at least once a year, nevertheless, sometimes a person may be obligated to communicate more often in the year, when he knows that it is necessary for him to preserve himself in divine grace (8). 3. — The matter of the Eucharist is both bread and wine, and it is never permissible for any reason to consecrate only one of the species, as is stated in the canons, "De Consecratione," and in the Council of Trent, session 22, chapter 1, where (1) Book 6, no. 189. — (2) No. 191. — (3) Ibid., Question 2. — (4) Ibid., "Quae est Dist." — (5) 3rd part, question 79, article 1, ad 1. — (6) No. 192. — (7) 5th part, question 80, article 11, ad 2. — (8) Book 6, nos. 195 and 295.

[*Latin ed. p. 368*]

356 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. It is said that Jesus Christ commanded the Apostles to offer Him only under both kinds; from which it follows, without doubt, that this precept is not merely ecclesiastical, but also divine, as the common opinion teaches (1). And we say that in such a precept, the Pope cannot dispense (2), since it is highly probable that the sacrament is not valid unless in a sacrifice, in which, when being confected (according to the true opinion), the consecration of both kinds is necessary, because otherwise the shedding of blood would not be expressed, and consequently, the sacrifice of the Cross would not be sufficiently expressed, in whose memory our Savior left the sacrament on the altar, as the Council of Trent states in Session 22, chapter 21 (3). Nor is it improbable that the opinion of Cardinal de Lugo is correct (contrary to the opinion of other doctors, although it is commonly held), who says that if a priest intended to consecrate only one kind, he would act invalidly; because the essence of the sacrament cannot be separated from the essence of the sacrifice, since the priest does not receive the power to confect this sacrament except by sacrificing, as is sufficiently clear from the form of ordination: "Receive the power to offer sacrifice, etc." Therefore, as we have said, the consecration of both kinds pertains not only to the essence of the sacrifice, but also to the essence of the sacrament; hence, he who does not offer the sacrifice, does not confect the sacrament (4).

4. However, there may be a case in which it is certainly valid, and even licit by accident, to consecrate one kind without consecrating the other, e.g., if, during the consecration, the priest noticed that he had consecrated water instead of wine, or if no other wine is available, or if it cannot be obtained without a grave danger to life or a grave scandal: likewise, if, after the host has been consecrated, a fire breaks out, or enemies invade (5).

5. The effects of the Eucharist are: I. An increase of grace (and this effect is the principal one), as is stated in the Council of Trent, Session 13, chapter

2; and sometimes, by accident, there is also the acquisition of original grace; namely, when someone, unaware of a mortal sin, or believing that he has contrition, approaches Communion with only attrition; thus, St. Thomas (6), Scotus, Suarez, Tolet, Roncaglia, Salm, and others commonly hold (7). The reason is that it is proper for each sacrament to confer grace upon all who do not oppose it, and he who has attrition already does not oppose the grace, since, as far as he is concerned, he removes the affect, both actual and habitual, towards sin (8). II. Remission of venial sins, as all teach, along with St. Thomas (9), according to the passage cited from the Council of Trent, where the Eucharist is called "the antidote by which we are freed from venial sins, and by which we are preserved from mortal sins." However, Salm and others believe that Communion, by itself, removes venial sins through the operation of grace, by which the soul is renewed. But Tournhem says that the sacrament does not immediately remove venial sins by itself, but through the act of charity which it excites in the soul; this is also the opinion of the Angelic Doctor, in the passage cited, when he says: "As for the act which is excited in this sacrament, by which venial sins are forgiven (10)." III. Preservation from mortal sins, through the help which the sacrament provides to restrain concupiscence, to resist temptations, and to walk in the paths of the Lord. IV. Remission of temporal punishment due for sins committed, not directly, but indirectly, through the acts of charity which this sacrament excites in the soul; thus, St. Thomas (11), Salm (1).

(1) Lib. 6, n. 196.

(2) Ibid., Dubit. 2.

(3) N. 306.

(4) N. 196, Dubit. 3.

(5) N. 197.

(6) 3a, q. 72, a. 7 ad 2, and q. 79, a. 3.

(7) Lib. 6, n. 269.

(8) N. 6.

(9) 3a, q. 79, a. 4.

(10) Lib. 6, n. 269, v. Effectus III.

(11) 3a, q. 79, a. 5.

[*Latin ed. p. 369*]

OF THE DISTRIBUTION OF THE EUCHARIST. 357 Council, etc. V. Spiritual delight, namely, facility in performing those things which please God. VI. Union with Jesus Christ; John 6:57: "He that eateth my flesh and drinketh my blood abideth in me: and I in him." VII. Acquisition of glory. Ibid., verse 59: "This is the bread that came down from heaven. Not as your fathers did eat manna and are dead. He that eateth this bread shall live for ever." 6. It must be noted here that it is highly probable that, as long as

the sacramental species remain in the stomach, the grace is continually increased, as held by Gonet, Becan, Lugo, Tourn, Juvenin, Holzm, Regin, Mastrius; and Salm. says that this sacrament, since it was instituted as a kind of food, as the Council of Fiorentino says, therefore, just as food nourishes the body as long as it remains in the stomach, so the Eucharist nourishes the soul as long as it remains in the body. It must also be noted that, according to a decree of the Sacred Congregation approved by Innocent XI, the abuse of giving several particles at once to those receiving Communion, or giving larger particles than usual, has been condemned. 7. It is asked here whether one commits a venial sin by receiving Communion with actual venial sin. There are different opinions on this matter, but among them, the opinion held by Vasquez, Filliuc, Hurtad, Ledesm, Sa, and Leand., and which is considered probable by Dicast. and Tambur., is pleasing to me, and it makes this distinction: if the fault is directly concerning Communion, e.g., if someone receives Communion out of vanity or with voluntary distraction, then no one doubts that one commits a venial sin, because such a fault is a positive irreverence towards the sacrament; although, as St. Thomas says, such a fault would prevent the spiritual nourishment of the soul from being received, but not the increase of grace or charity. However, if the venial sin is not concerning Communion, e.g., if someone were to receive Communion with an actual affection for some venial sin, then one does not sin, because then (as the Doctors commonly say), it does not impede the principal effect of the sacrament, nor the help by which one is preserved from mortal sin; since, on the one hand, venial sin does not oppose grace, and on the other hand, to communicate with such a fault is rather a lack of perfect reverence than a positive irreverence. Other matters pertaining to the matter and form of the Eucharist are noted in Appendix III, from 97 to 100. CHAPTER II. OF THE DISTRIBUTION OF THE EUCHARIST. 8. How are pastors to keep the Eucharist, and how is it to be distributed? Can a religious, and any priest, administer Communion? 9. And what about deacons? 10. Can Viaticum be administered in necessity by clerics, and also by lay people, and by themselves, etc.? 11. Can a priest administer Communion from himself out of devotion? 12. How should, and can, Viaticum be given? 13. Can Viaticum be given with the back fingers? 14. Can it be given in both species? And can a larger part of the host be given? To children and the sick? 15. To public sinners? And to the condemned? 16. Can it be given at a Mass for the dead? 17. At what hour can Communion be given? 18. If fragments remain. 8. LET US SEE to whom it is permitted to minister the Eucharist, and what is required in order to minister it lawfully. Regarding the first point, just as only priests can consecrate this sacrament, as it is a matter of faith (according to the 22nd session of the Council of Trent, canon 1), so the dispensation of this sacrament is granted only to priests. And strictly speaking, it is the duty of the pastor alone to administer Communion, because he is bound to see to it that the Eucharist is perpetually

kept in his churches and with due reverence, namely, in a fitting tabernacle, and always with a light. (1) Book 6, n. 269, v. Effect III, ad 5. (2) Ibid., in fine, and n. 228. (3) N. 228 in fine. (4) Tamb. in Met. commun. c. 1, 2, 4, n. 6. (5) 3 p. 4, 79, a. 6. (6) Book 6, n. 270, Question I.

[*Latin ed. p. 370*]

358. TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. It is kept lit day and night, and indeed, under a grave fault; however, if the light were to fail for only one hour, Diana and Quintanadvennas believe that this is not a grave matter. These same authorities hold that it must be administered not only to the dying, but also to the healthy, whenever they are reasonably and appropriately requested, as commonly stated by Sotus, Suar, Vasquez, Castropal, Filliuc, Azor, Dicast, Busemb, and the Salmanticenses (1). Furthermore, since Communion is not administered solely for the observance of the Paschal precept, nor as a viaticum, religious persons can, by virtue of their privileges, administer the Eucharist in their own churches, and today (as rightly testified by Castropal and Roncagl), it is commonly presumed that any priest celebrating has this faculty granted to him (2). 9. However, deacons cannot dispense the Eucharist without a special commission from the bishop, nor can parish priests; otherwise, they incur irregularity, as stated in chapter 1 concerning non-ordained clerics (3). Formerly, it was universally customary for deacons to administer the Eucharist, but today, it is not permitted except in cases of necessity, according to canon 39 of the Carthaginensis, which states: "If necessity compels, etc." However, Habert and Tournel require that this necessity be extreme; but commonly, Suar, Laym, Castrop, Lugo, and the Concilium Salmanticense, etc., state that any notable necessity or just cause is sufficient, as P. Conçina says, for example, if the parish priest is occupied with a major feast, or if the number of those wishing to receive Communion is large, etc. However, when a deacon administers the Eucharist, he must be vested in an alb and a stole (4). 10. When it is necessary to administer the viaticum to a sick person, and the parish priest is absent, any priest, and even a deacon, can administer it, even if the parish priest objects, provided the objection is unreasonable; thus, say Tolet, Sa, Dicast, Roncagl, Salm, Laym, Soto, etc., commonly (5). Indeed, in such a necessity, Suar, Valent, Cajet, Filliuc, Escob, (and Lug and Concin are said to likely agree against Gonet, Bonac, Salm, and others, whose opinion is generally more common) even a simple cleric can administer it, and even a layperson can administer Communion with their own hands; because, on the one hand, the divine precept of communicating is urgent; and on the other hand, no law is found expressly prohibiting this; and formerly, if a necessity arose, the faithful brought the Sacrament into their homes and communicated there; therefore, why should it not be permitted in a greater urgent necessity, such as that of death (6)? However, these authors permit this only when it can

be done without scandal; but I say that this can easily cause scandal, or rather, astonishment, which can be avoided by warning those present that this is permitted by theologians in such a necessity. And so, these same authors (contrary to others) permit laypersons, in the absence of priests or deacons, to administer the viaticum to the dying. The text in c. Pervenit, 29, dist. 2, which prohibits priests from entrusting the administration of the Eucharist to laypersons, does not apply, because it speaks of a priest who was acting outside of necessity. Nor should a contrary custom be an obstacle (as they say), because since this case occurs very rarely, a contrary custom cannot be adduced as proof of this. Laym strongly adheres to this opinion. Habert says that this should be permitted to laypersons at least with the permission of the bishop (7). Whether a parish priest is obliged to administer Communion during a plague is discussed above, treatise 7, number 28 (r). References: (1) Lib. 6, u. 250 and 248. (2) N. 255. (3) N. 234. (4) N. 237. (5) N. 254. (6) N. 237, Qu. r. II. (7) Ibid, Qu. r. III.

[*Latin ed. p. 371*]

OF THE ADMINISTRATION OF THE EUCHARIST. 359 11. — It is probable that, outside of the danger of death, if no scandal is present, and another priest is absent, priests can lawfully administer the Eucharist to themselves, even for devotion alone, as Sylv., Lug., Bonac., Croix, and Salmant confess; for in this, no irreverence is involved, nor does it violate any positive precept. Indeed, Vasquez, Dicast., and Leand. concede this even to deacons, since it has sometimes been granted to them by the Council of Nicaea, canon 14 (1). As for religious, how and when they may administer the Eucharist, see what is said in part 20, on privileges, no. 123. And where servants of regular monasteries, pilgrims, and vagrants may receive the Eucharist during Easter, see above, treatise 12, no. 42. 12. — Now, let us consider secondly what is required for the lawful administration of the Eucharist. It must be administered with due reverence, and according to the custom of the Church: hence, it should be noted that it is generally not proper to bring the Eucharist to the sick unless with a cotta, and a stole, and with lights; therefore, Suar., Filliuc., and Roncagl. commonly say that to administer the Eucharist without a cotta and a stole is mortally sinful; but without lights, it is only venial. However, in cases of necessity, Filliuc., Granad., Aver., Elb., Gov., Croix, Ren., Mazz., etc., say that it is permissible to administer the viaticum without lights and sacred vestments; for it is not presumed that, when these ceremonies cannot be performed, the dying should be deprived of this good. And Pasq. says that it is also permissible for a bishop to dispense with the wearing of a cap on the head when traveling far and through villages (2). Thus, also, Bon., Salm., Gob., Croix (against Bus.) say that it is permissible in cases of great urgency for a priest to hurry to arrive at the opportune time to give the viaticum (3). It is also permissible to administer it while riding, if the place is distant, or if the time

is Ploaghe, or if it is necessary to arrive there, as Quintanad., Elbel., and Gob. say (4), and it is read that this was granted by St. Charles Borromeo (5). Also, it is probable that during a plague, the Eucharist may lawfully be administered with a spoon, as Bon., Busemb., Marc., Mancin., Gobat., Leand., etc., say; and Escob. and Diana also admit of giving the host with water in a spoon to a sick person who could not swallow it because of the dryness of his mouth (6). It should be noted in passing that the Sacred Congregation declared that it was forbidden by St. Pius V to bring the Eucharist to the sick solely for adoration. Benedict XIV (7) in his letter to Cardinal Guadagni, the general vicar of the city, which begins "Cum," as you rightly know, in addition to the prohibition of St. Pius V, also the Roman Ritual promulgated by Paul V states that: "But" to no one shall the sacred sacrament be brought, merely for adoration, or for devotion, or for any other pretext, "to be shown" (8). 13. — It is also probable that, in cases of extreme or very serious necessity, it is permissible to administer the Eucharist with the posterior fingers, if the priest's thumb or index finger is infirm, as Tournel, Conc., Ronc., Salm., Bus., Diana, and Renzi commonly say, against Bonac. Indeed, Gobat., Arriaga, Croix, Leand., and Mazz. hold that this is permissible even outside of necessity, if the priest has a hand injury, because they say that the entire hand of the priest is consecrated; but Bonac., Possev., Diana, and Renzi more probably deny this, because although the entire hand is consecrated, according to the custom of the Church, the thumb and index finger of the priest are especially destined for this office. It is commonly held that (1) Lib. 6. n. 238. — (2) N. 241. v. Ministrare. — (3) N. 242. — (4) N. 243. — (5) Act. Mediol. p. 4. n. 51. — (6) Lib. 6. n. 244. v. 6. Non licet. — (7) Bullar. t. 4. p. 328. 2. 22. et in edit. Moch. t. 44. p. 194. 2. 12. — (8) Lib. 6. n. 245. v. 4. Eucharistia.

[*Latin ed. p. 372*]

360 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. It is held that a priest should not celebrate Mass if he has an infirm thumb or forefinger, so that he cannot break the host, as is deduced from chapter 11 on vitiated offerings, where it is stated that a priest who does not have a suitable thumb for breaking the host cannot be ordained, and according to the general rule, whatever prevents one from receiving Holy Orders also prevents one from exercising them.

14. — It should be noted that, according to the present discipline, it is never permissible, without the dispensation of the bishop, to administer the Eucharist under both species or in the species of wine alone, even for the administration of viaticum; thus, generally, Suarez, Lugard, Tamburini, Dicastillo, Dian, Croix, etc. For the precept of viaticum does not obligate if it cannot be received according to the rites of the Church. Thus, it is also not permitted, even if it does not exceed a venial sin, to offer a portion of the larger host for Communion. However, it is sufficient reason if the person

to be given Communion is infirm, or noble, or a servant, or another for whom it would be inconvenient to wait, even if Communion is given for devotion's sake, as generally held by St. Antoninus, Sylvestri, Bonaventure, Tournhem, Council of Salm, Elbel, etc.

15. — It should also be noted that Communion should not be given to public sinners, unless it is known that they have made their public penance, as stated in treatise 14, number 5. However, it is useful to note what we have determined from the letter of Benedict XIV to the bishops of France, which begins, "Ex omnibus," published on October 16, 1756, where it provides a rule for when viaticum should be denied to those who refuse to submit to the Unigenitus constitution. There, it is decided that Communion should be denied to public and notorious sinners; but in order for them to be considered as such, it is required (if the crime consists solely in an external action, such as the notoriety of usury or concubinage), that they either be declared guilty by a sentence of a judge; or that they have confessed the crime in court; or that they are known to have committed some offense; and that they continue to persist in that offense, which is commonly known and has not yet ceased. The reason for this is that these things provide moral certainty of their notoriety of the crime. If the crime depends on an internal disposition of the mind (such as heresy, etc.), a different procedure is required; for then such persons are not to be considered as such if the crime is based on conjectures, presumptions, and uncertain voices. It is stated that if these persons are at the end of their lives, viaticum should not be denied to them, unless it has been denied to them during Easter; but if there are serious and urgent indications against the sick, it is desired that the sick person be gently and secretly admonished to repent; and that it should be shown to them that, although they are given viaticum, this is done only to comply with the Church, which, in order to avoid public scandal, and to protect the sick person from infamy, does not exclude him from the sacred table, although it considers him a sinner before God, but does not, in its own tribunal, recognize him as a public and notorious sinner.

However, we have affirmed, with Suarez, Laym, Roncaglia, Gonet, Viva, etc., against others, that it is a grave sin for one who is in mortal sin to administer the Eucharist, and we have cited the Roman Catechism and the Ritual.

It should also be noted that it is sinful to deny Communion to those who are condemned to death, if they are disposed to receive it through confession, as rightly stated by Father Concina, whatever Contensonius may say, although, as Juvenin testifies, in France (1), it is the practice.

(1) Lib. 6, n. 244.

(2) N. 245, see Peccat I.

(3) Ibid.

(4) N. 246 and 247.

[*Latin ed. p. 373*]

ON THE ADMINISTRATION OF THE EUCHARIST. 361. In Spain, the custom prevailed of denying the Eucharist to those condemned to death; but the opposite is observed among us; therefore, we say that it should not be denied, even if the condemned person has only one hour of life remaining (1). 16. — It should be noted that, in a Requiem Mass, Communion can undoubtedly be administered; for the rubric for Masses for the Dead states: "If they are to be given Communion, let them receive it before he purifies himself." And the Council of Trent, Session 22, Chapter 6, states: "The Holy Synod desires that the faithful should receive Communion in every Mass." And although Gavant and Croix cite a certain decree of the Holy See from 1701 to the contrary, the learned Merati writes that he has read in the directory of the Church of Genoa that the same congregation forbade the publication of that very decree; and on March 22, 1711, it expressly suspended it (2). And most recently, on September 2, 1741, it decreed expressly that the Eucharist could be administered as a sacrifice, that is, with particles consecrated within the same Mass, in Masses for the Dead celebrated in black vestments; otherwise, as a sacrament, that is, by taking out consecrated particles from the pyx, contrary to what Benedict XIV had previously taught (3), that in Masses for the Dead, the Eucharist could be administered, even from consecrated particles, only during the Mass, and not before or after it; see the decree in the catalog that is included in this treatise, no. 88, decree 10. It should be noted here that if a Mass for the Dead is celebrated in violet vestments (as can certainly be seen from the decree of the Sacred Congregation of June 21, 1670, in Merati's Index, vol. 1, no. 444), it is not forbidden to give Communion from consecrated particles, either before or after the Mass, and much less during the Mass, since in the aforementioned decree, only the administration of the Eucharist in Masses for the Dead (in the very words of the decree) celebrated in black vestments is prohibited. 17. — It should be noted that, in itself, Communion can be administered at any hour of the day, as long as there is no prohibition to that effect; this is commonly stated by Azor, Sylos, Castrop, Bonac, Sa, Coninch, Ronc, and others, with Suarez, who cites the authority of St. Ambrose, who testifies that in his time, Communion was given until the end of the day. However, it is not permitted to give Communion when it has begun to grow dark, or in the latter part of the day, unless there is a special reason for it, as Suarez, Castrop, Coninch, Sa, Tambur, etc., say. But it is never permitted, except for the viaticum given at night, as Bonac and Salmant say, that is, to administer the Eucharist many hours after nightfall. In the Nativity Mass of the Lord, which is celebrated at midnight, it is not permitted to offer Communion, according to several decrees of the Holy See; and likewise, not in the Mass of the Holy Friday. However, on Holy Saturday, there is no

prohibition to this effect; I only find that a certain author (Macrus in Vocab. Ecclesiast.) says that in the Mass of Holy Saturday, the antiphon after Communion is omitted, because formerly the Eucharist was not administered: but Father Merati, with Grancolas, Moretto, and others, proves the opposite from a certain Roman order, namely, that formerly in the Mass of Holy Saturday, all adults and children received Communion, as it is written in the aforementioned order: "Let all receive." And Gavant and Durandus add that today, only Communion and the post-Communion are omitted, to the extent that Vespers have taken their place. Therefore, it is concluded that there is no valid reason why the administration of the Eucharist should be considered prohibited on that day; and as for custom, it is certain that in many churches, especially in our kingdom, and especially in (1) Book 6, nos. 246 and 247. — (2) No. 249. — (3) De Sacrif. Miss. 1. 3. c. 18, nos. 10, 11, and 12.

[*Latin ed. p. 374*]

362 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. In the cathedral of Neapolis, it is customary after the solemn celebration of Mass to administer the Eucharist to the people (1). 18. — Note 6: If a priest, having washed his hands, notices that some consecrated relics have been left behind, the rubric states (title 6, no. 2): he should take them, whether they are small or large, because they pertain to the same sacrifice; and even if the priest enters the sacristy while still wearing his sacred vestments, he may take these relics, as Gobat, Granadensis, and Diana state, to which Benedict XIV assents (2), who adds that if the priest has removed his vestments, then either they should be placed in the tabernacle, if one exists, or they should be kept for another Mass, if one is to be celebrated that same morning; otherwise, he must take them. And so, generally, Suar., Lugo, Cajet., Navar., Vasquez, Sylv., Bonac., Croix, etc. (against Tamburin), state that relics that remain from another Mass should be kept, if it can be done without danger of irreverence, provided that they do not pertain to the same sacrifice: for the rubric does not permit the taking of any particles other than those that pertain to the same sacrifice (3). However, if a whole particle remains, the rubric no. 3 states that it should be taken to the tabernacle, or at least kept so that it may be taken by the celebrant who follows (understand, after the first has already taken the ablution); and if another Mass is not to be celebrated, it should be kept in the same chalice; and finally, if there is no way in which it can be kept with decency, the same priest may take it. Furthermore, the particles that are found outside the corporal, if there is doubt as to whether they are consecrated or not, Bonac., Henriq., and Gobat state that they should be taken after the ablution; and it is, I say, better to do so during the same ablution. Moreover, if it should ever happen that a particle remains in the paten or pyx when bringing the viaticum, Castr., Tamburin, and Burghaber state that the priest may take it

if he is wearing his sacred vestments; or (as the same authors state with Lugo and Marchantio), it may be immediately given to the sick person. And Lugo asserts that this is the practice, namely, that after Communion, water is poured into the pyx, and the ablution is given to the sick person (4). When the viaticum may and should be given, observe what is said in no. 19 and no. 46. CHAPTER III. ON THE RECEPTION OF THE EUCHARIST. PARAGRAPH I. ON THE OBLIGATION TO RECEIVE THE EUCHARIST. 19. Concerning the viaticum; and when it should be received. — 20. If the sick person is afflicted with vomiting. — 21. Concerning coughing. — 22. Concerning the Paschal precept. See above, Tractate XII, no. 39. 19. — THE PRECEPT OF COMMUNION OBLIGATES AT TWO TIMES, DURING PASCHAL TIME AND AT THE TIME OF DEATH. REGARDING THE PASCHAL COMMUNION, WE HAVE ALREADY SPOKEN WHEN WE DISCUSSED THE PRECEPTS OF THE CHURCH ABOVE, treatise 12, from no. 39; and concerning the viaticum, we say here that every faithful person is bound to receive it, always and whenever the sick person is in a probable danger of death; such as those who are lying gravely ill with mortal symptoms; those who are about to engage in a dangerous undertaking or voyage; and women who are in labor (1).

(1) Lib. 6. n. 262.

(2) De Sacrificio Missæ l. 3. c. 17. n. 5 et 6.

(3) Lib. 6. n. 251.

(4) Ibid. v. Ilie autem.

[*Latin ed. p. 375*]

OF THE OBLIGATION TO RECEIVE COMMUNION. 363 with danger; or those who give birth for the first time, and are of tender age, or who are of a weak constitution; thus, generally, the Doctors teach, along with St. Thomas (1). 20. It must be noted that when a sick person suffers from constant vomiting, he cannot receive Communion, unless at least six hours have passed since the last vomiting, as Busemb. states, and in case of doubt, Croix rightly argues against others, that Communion should not be given; for the reverence of the Sacrament should be considered more than the benefit to the sick person. As for practice, if the vomiting comes from food, when the sick person receives it, he should be given an unconsecrated particle, and if he retains it, then the consecrated particle may be given. And the same should be done (as Salm. et al. say) in the case of delirium, in order to observe whether the sick person is able to receive the Sacrament with due reverence (2). 21. However, if a sick person is troubled by constant coughing, which causes him to frequently expel phlegm from his chest, he can rightly receive Communion; because this does not necessarily cause the particle to be ejected; for one is the vehicle (namely, the esophagus) through which food passes, and the other is the channel (namely, the trachea) from which phlegm and coughs are expelled. Otherwise, if the cough

were so severe that it would not even allow the particle to pass (3). Regarding Communion given to children and to those at the point of death, see also the same treatise, 12, nos. 43 and 44. Therefore, with regard to the obligation to receive Communion, what has been said is sufficient. Now, it remains to discuss what dispositions are necessary to receive Communion licitly. There are two: one of the soul, the other of the body. Let us first speak of the disposition of the soul, and then of the body. POINT II. OF THE DISPOSITION OF THE SOUL. 22. Concerning confession that must precede. — 23. He who, after confession, remembers a sin. — 24. What necessity excuses from confessing beforehand. — 25. If a priest remembers a sin or censure while celebrating. — 26. If a confessor is lacking. — 27. If the sin is reserved. — 28. Whether it should then be said that it is reserved. — 29. If excommunication is attached. — 30. How should it be understood: "As soon as possible." — 31. Whether such a precept obliges after consecration. — 32. Whether it obliges the celebrant who has committed sacrilege. — 33. Whether it obliges the laity. — 34. Whether one who doubts about a sin can receive Communion. 22. He who wishes to receive Communion, and is conscious of a mortal sin, is not sufficient with contrition, but it is necessary that he confess; however, he can receive Communion, provided that there is a necessity for celebrating or receiving Communion, and there is a lack of a confessor; but if he is a priest, he has the obligation to confess as soon as possible after the celebration, as is stated in the Council of Trent, Session 13, chapter 7, where these words are found: "To one who wishes to receive Communion, it must be remembered" his (the Apostle's) precept: "Let a man examine himself." 1 Corinthians 11:28. Furthermore, the Council states: "That no one, however contrite he may be, who is conscious of a mortal sin, should approach the Holy Eucharist without the preceding sacrament of confession." From these words, the common opinion and the true opinion (4), Suarez, Castrop. Lugo, Conc. Salm. Tourn., etc. (against Navarrus and others), teach that this precept of confessing beforehand is not merely ecclesiastical, but also divine, since the Apostle testifies in his epistle that he received this from the Lord: "For I received from the Lord that which I also delivered to you." 1 Corinthians 11:23. Then the Council adds: "That all Christians, even priests..."

(1) Book 6, no. 291.

(2) No. 292, line 2. If the person is sick.

(3) Ibid., in doubt.

(4) No. 256.

[*Latin ed. p. 376*]

364 TRACT. XV. ON THE SACRAMENT OF THE EUCHARIST. "Regarding the circumstances under which it is obligatory to confess, this Holy Synod has decreed that this rule must be observed perpetually, provided that there is a sufficient supply of confessors. However, if, due to urgent

necessity, a priest celebrates without prior confession, he must confess as soon as possible."

23. "Therefore, it is stated that 1. one who is conscious of a mortal sin cannot receive Holy Communion unless he has first confessed. It is called 'mortal' because, while venial sins, however numerous, do not deprive one of divine grace, nor do they prevent one from approaching the sacred table. However, whether they impede the attainment of its benefits, see what is stated in n. 7. The question arises whether one who remembers a grave fault, after having confessed with general sorrow for sins, is obligated to confess that specific fault, in order to receive the benefit of absolution before Communion? Many doctors affirm this (and this opinion is generally held); among them are Suarez, Bonaventure, Concina, Tournely, Salm, etc.; they only make an exception if one could not make the confession without risking scandal or infamy. However, Garzia, Præp. Ferrantinus, Honorius, Fabri, Cornelius, and Reginus, and most recently the Continuator of Tournely, along with Pontas, Gibert, and Arr., strongly deny this opinion; and they assert that the first opinion has no valid foundation. I do not presume to assert this, but I believe that the second opinion is truly very reasonable, as affirmed to me by the learned Bishop Torni, and another learned theological examiner from the city of Neapolis, and other theologians whom I consulted before writing this. Our reasoning is as follows: since one has made a confession, he has already fulfilled the precept of confessing before Communion, and he has already been proven worthy, as the Apostle commands: 'if we confess our sins, he is faithful and just to forgive us our sins, and to cleanse us from all unrighteousness.' However, the penitent remains obligated to bring that sin to the keys afterward, so that the confession may be complete even materially; but in the meantime, he is not obligated by the precept to confess before Communion. The opponents argue that the precept indicated by the Council regarding confession requires not only a formal, but also a material, complete confession. But we reply that we are grateful for this assertion, since the precept does not require any confession other than the one that the penitent is obligated to make, namely, a confession that is formally complete; for through that confession, the end and effect intended by the precept are already attained, namely, that the soul remains proven worthy, and is more certain of divine grace, which is more easily acquired through sacramental absolution, which, with contrition alone, erases sins. Nothing prevents this, as they object, because this should not be established as a rule for obligation, but rather should be considered as a pious and laudable practice, which should be encouraged to all, whenever no other circumstance dictates otherwise (1)."

"Whether one who is uncertain whether he has committed a mortal sin that he has not confessed is obligated to confess it before Communion, see what is stated in n. 34.

24. "It is stated that 2. confession is necessary, unless there is a necessity for celebrating or receiving Communion. Let us now consider what is meant by the term 'necessity.' We do not mean here great devotion; nor do we mean the poverty of a priest, unless it is a very grave poverty, as Croix says; but we mean an urgent necessity, such as 1. when the Eucharist must be administered to a dying person, as all agree (2); 2. when Communion cannot be omitted without causing scandal or infamy, e.g., if someone is sitting in the seat of those receiving Communion (1) Lib. 6. n. 257. — (2) N. 260.)"

[*Latin ed. p. 377*]

ON THE DISPOSITION OF THE SOUL. 365. It has already been observed that one cannot depart from a state of grace without it being noticed by others, as the Doctors commonly say (1). The same would be true if, when administering the viaticum to a sick person, there was not enough time to complete the confession without danger of death or infamy; because, as Concin. Sporer, Busemb. Tambur., etc., rightly say, the priest, having heard of some sin, ought to absolve the dying person, imposing upon him the obligation to make a complete confession afterward, and then ought to give him communion (2). 3. If a priest were to celebrate Mass and the people were to attend the sacred rite, and there were no other priest to celebrate, or if he himself could not omit the celebration without causing scandal, then it is permissible. But this is not allowed to other priests, as Lugo, Castrop., Aversa, Salmant., and Ronc. contra Dianam, rightly point out, even though the people ought to abstain from Mass on a festive day (3). And so we also say, with Suar., Laym., Lugo, Bonacin., Tournely, Conc., etc. (against Sot. and Sylvestr.), that a priest ought rather to omit Mass on a feast day out of obligation than to celebrate without confession, because such a precept, being divine, is to be preferred to the ecclesiastical precept concerning attending Mass (4). But can anyone receive communion with only contrition, when there is a lack of confessors, in order to fulfill the Paschal precept? Others, namely Sot., Pal., Coninc., Henriq., Castr., Lugo, etc., commonly assert that this is permissible, because the Paschal precept is also divine. But Suar., Tourn., Salm., etc., deny this, saying that in such a case the precept of Paschal communion does not obligate. Both of these opinions are probable (5). 25. If it should happen that a priest, while celebrating Mass, remembers a mortal sin, whatever others may say, it must be distinguished, as with the common opinion of Suar., Vasq., Lug., Castrop., Bonac., etc., that if he remembers it after the consecration, then the Mass is not to be interrupted in order for him to confess, as St. Thomas also teaches (6), and as is expressed in the rubric (de Defect. tit. 8, n. 4): it is understood that the act of contrition must always be elicited; and although Lugo, Tamb., and others say that if a priest had great difficulty in such a time of distress to confess to himself, he could proceed with the Mass

without sin, provided he tried to elicit contrition; nevertheless, P. Concina rightly contradicts this, arguing that in such a case the divine precept is urged, and no one is ignorant that God does not command impossible things, as Trident. sess. 6, c. 11 says, but rather provides his assistance to accomplish them, or at least to ask for that which we must do: hence, if a priest sins in failing to confess to himself, he sins through his own negligence, or because he adheres to sin. But if he remembers before the consecration, and especially before the canon, then he ought to confess, if a confessor is present and if he can do so without causing scandal: and it does not matter if the Mass is interrupted, for such a part is external to the sacrifice (7); and if a confessor cannot be found, and there is no danger of scandal, it is more probable that he is obligated to omit the Mass, as Lugo, Silvius, Tourn., Sylv., and others say, to whom St. Thomas also adheres (8), saying that this opinion is safer (against Castr., Suar., Nav., S. Bonav., Victor.). And this opinion seems to be in accordance with the rubric (3, p., tit. 8, n. 4 and 5), where it is read: "If, before the consecration, a priest remembers that he is in mortal sin, or that he is excommunicated, or suspended, or that the place is interdicted, if scandal is not feared, he ought to continue the Mass begun."

(1) Lib. 6, n. 257 and 263.

(2) N. 260 ad 2.

(3) N. 261.

(4) Ibid. v. 4. If urgent.

(5) Ibid.

(6) 3, p., q. 33, a. 6 ad 2.

(7) Lib. 6, n. 262, v. Hie dubit. 1.

(8) 3, p., q. 33, a. 6 ad 2.

[*Latin ed. p. 378*]

366 TRACT. XV. ON THE SACRAMENT OF THE EUCHARIST. "To desert." We have stated that it is more probable, because it is not certain that the rubric, by the word "desert," imposes a grave precept. Furthermore, Vasquez, Laym, and Tourn rightly observe that in such a case, it is difficult for a priest to miss Mass without incurring infamy (1). 26. It is stated: "if there is a lack of confessors." This is understood in two ways: 1. If there is no confessor available, and the priest who is to celebrate Mass cannot reasonably reach another confessor who is absent without serious inconvenience, as Catrop, Vasquez, Salm, and others say: "absent" is understood to mean that the confessor is at a notable distance, e.g., (as they say) two or three hours' journey, or even less (as Canus says), if the Mass is to be celebrated shortly (2). 2. If there is a confessor present, but he is ignorant of the language, or is deprived of jurisdiction, or is otherwise such that the priest cannot, without serious harm, confess to

him (3). 27. But the question arises: 2. If one has a reserved sin, and there is no confessor present who has the faculty to hear such confessions, is he obligated to confess to a simple confessor in order to receive Communion? The answer is: if this person has no other sin besides the reserved sin, the common opinion is that he is not obligated to confess, but in cases of urgent necessity, it is sufficient for him to receive Communion with contrition; but if he has only attrition, he is obligated to confess about other matters, so that at least he may be absolved from the reserved sin indirectly. However, if he has both reserved and non-reserved sins, we say, with the common and more probable opinion of Suarez, Castrop, Viva, Lugdunum, Conc., Salm, and others (contrary to Vasquez, Tourn, etc.), that he is obligated to confess; because, since the precept of confessing before Communion remains, if he cannot do so materially and completely, he must at least do so formally (4). 28. The question is asked: 2. Given that this person confesses to a simple confessor, must he explain both reserved and non-reserved sins? Sotus, Filliucius, Bonacini, Suarez, Viva, Conc., Salm, etc., affirm this with probability; for the confessor must necessarily know the whole confession of the penitent, in order to judge his disposition for obtaining absolution, e.g., if he has contracted a habit, if he is in a proximate occasion of sin, etc. However, Castrop, Gerson, S. Antoninus, P. Sotus, Alens, Salas, Ledesma, and Lugo also say that this is probable; firstly, because it does not seem that there is an obligation to disclose sins to one who has no jurisdiction over them, and therefore is incapable of judging, and secondly, because otherwise the penitent would have the burden of confessing the same sins twice. And although someone who has contracted a habit, as mentioned, and does not have moral certainty of his disposition, would be obligated to reveal his whole conscience to the confessor, so that he might judge whether he is capable of absolution; nevertheless, this would be by accident, but not because of the obligation to make a materially complete confession, since the formal completeness is sufficient in itself (5). 29. If someone were subject to a reserved excommunication, and there was an urgent need to receive Communion, and he could not be absolved from it by anyone, the common opinion is that he could receive Communion before being absolved from it, because the precept that forbids excommunicated persons from the sacraments does not apply, since otherwise, scandal or infamy could not be avoided. However, it is doubtful whether he could then confess to someone who lacks the faculty to lift that excommunication. They deny this with probability (1) Lib. 6. n. 262. Dubit. 2. — (2) N. 264. ad r. — (5) Ibid. ad 2. — (4) N. 265. — (5) Ibid. v. Quær. II.

[*Latin ed. p. 379*]

ON THE DISPOSITION OF THE SOUL. 367. Sylvius, Canus, Sot, Vasquez, etc., state that he can indeed receive Holy Communion, provided

he is contrite; but he cannot receive the Sacrament of Penance, since he has been forbidden to do so by excommunication. However, Suarez, Sanchez, Lugo, Concina, Salamanca, etc., argue more plausibly that, just as excommunication does not deprive one of the Sacrament of the Eucharist in cases of necessity, so too it does not deprive one of the Sacrament of Penance, which he can always receive if he desires to do so; it is to be received according to divine precept, after confession. And these authors rightly demonstrate that someone can be validly absolved from sin even if not absolved from excommunication, since the Church cannot, by imposing a censure, invalidate the sacraments which depend on divine institution. Thus, someone who is excommunicated and confesses would be validly absolved, even though he is indisposed, since the Church has forbidden him to receive the sacraments; but if necessity exempts him from such a prohibition, then he validly and licitly receives sacramental absolution (1). 30. Finally, it is stated that if a priest, conscious of a mortal sin, celebrates without having confessed, due to urgent necessity, and because he has no one to whom he can confess, he should be instructed by the council to confess as soon as possible after the celebration. This is not merely advice, as the proposition 38 condemned by Alexander VII stated, but is a true and indeed serious precept. Given this precept, the following is asked: 1. How is "as soon as possible" to be understood? Some understood it to mean that the priest would confess when he has the opportunity; but this explanation was also condemned by the same pontiff in proposition 30. Others understood it to mean that the priest should confess when he intends to celebrate again; but this explanation is also unlikely, since the council commanded confession precisely after the celebration, even if the priest were to abstain from celebrating at that time. Others, however, are too rigid and say that it should be understood to mean immediately, as soon as he has the opportunity to confess, even on the same day; thus Wigandt and Concina. But, as is rightly said by Milante, Concina, Lugo, Escob, and others, along with La Croix (who cites a certain declaration of the Holy See), it is sufficient if the priest confesses within three days, by analogy to the obligation that those who are absolved from reserved excommunication have to approach the confessor as soon as conveniently possible, as stated in *Eos qui* (under penalty of incurring the same censure), an obligation for which it is also understood that three days suffice; Lugo, Garcia, and Milante. The same applies to the obligation to deliver the books of heretics to the bishops: Sanchez, Ugolin, and Sayr. However, the aforementioned doctors point out that in some cases, the priest may be obligated to confess on the same day, and perhaps even at the same hour, e.g., if the confessor were about to depart quickly, or if the priest were in such a state of necessity that he would have to celebrate the next day, in which case the confessor would also be absent (2). 31. 2. Is this precept binding on the priest who celebrates, remembering his

sin after the consecration? Vasquez, Pelliz, Lugo, and Diana deny this, because the rubric (title 18, numbers 3 and 4) speaking of the one who remembers before the celebration, says that he is obligated to confess as soon as possible; but speaking of the one who remembers after the consecration, it says nothing other than that he should be contrite with the intention of confessing. This opinion does not seem improbable; but the contrary opinion is more common and perhaps more probable (1) Lib. 6, n. 265, see Question III. — (2) N. 266, see Position.

[*Latin ed. p. 380*]

368 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. Suarez, Molfes, Megal, Bonac, Reginald, etc., because it is there that the case presumed by the Council is verified, namely, that someone is celebrating Mass while in sin and without confession; all the more so, because in the rubric concerning confession, the words "as soon as possible" are easily understood, as they were already expressed in the rubric just before (1). 32.—Question 3: Does this obligation extend to sacrilegious priests, or to those who are bound and able to confess, but celebrate Mass without doing so? Some affirm this; but the true and most common opinion, following Suarez, Vasquez, Lugubilio, Filliucca, Syr, Moya, etc., denies it, because the Council's decree only applies to those who celebrated Mass in good faith, and who might postpone confession under the pretext of necessity; it does not apply to sacrilegious individuals, for such a decree would be useless to them: those who despise the divine precept of not celebrating Mass in sin, will more easily despise the ecclesiastical precept of confessing as soon as possible (2). 33.—Question 4: Does this precept of confessing as soon as possible also obligate laypersons who receive Communion out of necessity before confessing? Azor, Navar, the Council of Trent, and Tournhem affirm this, stating that the same reasoning applies to laypersons as to priests, based on the general principle: "Where the same reason exists, the same disposition of the law applies." However, the most common and probable opinion, held by Wigand, Coninck, Suarez, Vasquez, Laym, Bonac, Filliucca, and Lugubilio, is to the contrary, arguing that the reason that applies to priests does not apply to laypersons, because priests often have a greater need to celebrate Mass to avoid scandal than laypersons have to receive Communion (3). 34.—Question 5: Can a person who is doubtful whether they are in the state of grace receive Communion? We answer this question in our work (4), stating that (in order to resolve the doubt) someone who doubts whether they are in sin cannot receive Communion. Nevertheless, after careful consideration, it seems to me that a more nuanced answer is preferable. Therefore, let us say this: If someone doubts whether they have committed a serious sin or not, then they may licitly approach Communion without prior confession, whether the doubt is negative or positive (provided they make an act of contrition

to ensure they receive the benefits of the sacrament). For the Apostle's precept, "Let a man examine himself," which, as the Council of Trent declared, obligates only those who are conscious of their sins, namely, those who certainly know that they have committed a mortal sin of which they have not yet confessed, as the same Council declared in Session 13, Chapter 7, stating: "No one who is conscious of a mortal sin should approach the Eucharist." Therefore, the precept of prohibition only takes effect after a person has become aware of their sin. Conversely, if someone is certain of having committed a sin, then they cannot receive Communion unless they are certain that they have been absolved through confession, because in that case, the precept of prohibition certainly applies to them. Therefore, someone who is in doubt, whether negative or positive, about whether they have regained or lost their grace (e.g., someone who doubts whether their confession was valid due to a lack of proper disposition or jurisdiction, or who doubts whether they made a sincere act of contrition in a case of necessity), cannot receive Communion, because they would then be acting against the precept that requires not only probable, but also certain, absolution, just as the sin itself was certain. However, one might object that, as stated above in Tractate 1, paragraph 17, probable satisfaction is sufficient to fulfill precepts. But this is not the case (1) Book 6, paragraph 267. — (2) Paragraph 266. Question V. — (3) Paragraph 268. — (4) Paragraphs 432 & 475.

[*Latin ed. p. 381*]

ON THE DISPOSITION OF THE BODY. 369. Ronc. (1) states that this opinion is valid when it is a matter of repeating an act for which satisfaction has probably been given; for it is not presumed that the legislator intends to obligate one to satisfy his laws with such rigor as to require the repetition of acts for which satisfaction has probably been given; but this is not the case when it is a matter of what one ought to do; and it is also not the case when one can abstain from some act without great inconvenience, before being certain that he has fulfilled the condition imposed by the law, which he possesses; for in this case, no connivance of the legislator is presumed; and this is the case in the present situation.

POINT III. ON THE DISPOSITION OF THE BODY.

35. On natural fasting. In case of doubt concerning fasting. If the clocks are discordant. What is taken from outside breaks the fast.

— 36. On relics of food.

— 37. On relics of water, sugar, etc.

— 38. On tobacco taken through the nose.

— 39. Whether smoke of tobacco.

— 40. On tobacco leaves, and aromatics ground with the teeth.

— 41. On water, or similar substances, voluntarily swallowed through the nose, or accidentally.

— 42 and 43. Whether hairs, small stones; paper, etc., break the fast.

— 44. Concerning those who have not yet digested, etc.

— 45. To spit out immediately after Communion.

— 46. In which cases fasting is not required, and I. concerning the viaticum. Whether the viaticum can be given.

— 47. And how often.

— 48. Whether one who, out of devotion, communicated a few days prior, etc.

— 49. Whether one who communicated that same morning.

— 50. Whether the words: "Receive the viaticum" can be omitted.

— 51. Whether one who is not fasting can administer the viaticum.

— 52. II. Fasting is not required if there is fear of sacrilege.

— 53. III. If there is fear of scandal; if the celebrant remembers that he is not fasting.

— 54. IV. If the Sacrifice is to be completed. What should be done if wine is noticed; and what in case of doubt, etc.

— 55. V. Whether one can celebrate without fasting to avoid death.

— 56. Whether pollution prevents Communion.

— 57. Whether marital intercourse.

— 58. One who is externally filthy, or leprous, or menstruating, or approaches immodestly. A priest who communicates in the manner of the laity. 35.

In itself, for Communion to be lawfully received (according to the Church's precept in chapter Ex parte, de celebr. Miss.), natural fasting is required, namely, that one has taken no food or drink from midnight. However, it is doubtful whether one who has swallowed something after midnight is thereby prevented from Communion, as we said above, tr. 1, n. 19, because (as we have demonstrated there) this precept is not positive, namely, that one must be fasting in order to approach Communion; but it is negative, namely, that one must not communicate after the fast has been broken; therefore, whenever it is not certain that the fast has been broken, the prohibition does not apply, but rather the freedom of the one who wishes to communicate. And for this reason, Sanch., Lug., Merati, Holzm., Croix, Salmant., Quarti, Escob., Villalob., Trullench., Fagund. commonly state that it is permissible to follow the last clock that indicates midnight, provided that there is no certainty of error; and provided (as Croix rightly adds) that this last clock is not one that is known to err frequently, because in that case, the presumption is that it always errs (2). But note that the time of midnight is not determined, as the Salamanca theologians state,

by the last stroke of the clock, but by the first, as Lug., Sanch., Tourn., etc., rightly say, and of this I have become certain through a very skilled clockmaker (3). For the same reason, a small amount of matter is not admitted, as all confess, whatever Gibert and Pasqual may say, because the precept concerning not approaching Communion after having taken food or drink is negative (4). To break this fast, according to the rules commonly assigned by the doctors, three things are required: 1. That what is swallowed is taken from outside; 2. that it is taken in the manner of eating or drinking; 3. that it has the nature of food, or

(1) Ronc. de Eucharistia, page 3, question 6, response 6.

(2) Lib. 6, n. 292.

(3) Ibid. v. Num autem.

(4) C. 279, 24.

[*Latin ed. p. 382*]

370. TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. Regarding food. Therefore, according to the first rule for breaking the fast, something must be taken from outside the body; thus, Suarez, Croix, Sporer, etc., following St. Thomas (1), who says that whatever comes from within the body cannot be said to be eaten, and therefore does not break the fast (2). Given this, one can validly receive Communion even if they swallow blood flowing from the head or gums, even if they do so intentionally; thus, commonly, Suarez, Laym, Bonac, Cabas, Habert, Antoine, Salmanticensis, and others, despite what Tournely may say; for, as St. Thomas says, whatever is not taken from outside is not said to be eaten (3).

36. But here arises a doubt: does it break the fast if one voluntarily swallows food remnants left in the mouth? Suarez, Quarti, Henriq, Castr, Elb, Coninch, and others completely deny this, saying that such remnants are to be considered as parts of the day's meal, and the rubric seems to adhere to this opinion (de Defect. n. 3), stating: "If remnants of food remaining in the mouth are swallowed, they do not impede Communion, since they are not swallowed as food, but as saliva." However, others, such as Vasq, Laym, Bonac, Tourn, Ronc, Cabas, commonly affirm that such remnants do break the fast if swallowed intentionally, because then it has the nature of a new meal, and St. Thomas (4) also holds this opinion, saying: "Remnants of food remaining in the mouth, if swallowed accidentally, do not impede Communion"; therefore, (according to the Angelic Doctor), if they are swallowed voluntarily, they do impede Communion. This opinion seems more probable, although I do not consider the first opinion to be entirely improbable; but since one should not be overly scrupulous in this matter, as Suarez (5) rightly points out, I readily embrace the opinion of Cardinal de Lugo, which is also followed by Benedict XIV in his celebrated

work on the Sacrifice of the Mass (6), which states that remnants torn from the teeth that are felt on the tongue should be spat out; but otherwise, there is no obligation to take care to scrape them from the teeth; for such an obligation would be too prone to scruples, and this seems to be what the rubric mentioned above requires, stating that such remnants are swallowed as saliva (7).

37. The same applies to remnants of water used to rinse the mouth, which also impede Communion if swallowed voluntarily, but not if unintentionally; thus, commonly, Suarez, Castrop, Tourn, Holzm, Salm, etc., following St. Thomas, in the aforementioned passage, where he says: "And the same applies to remnants of water, or wine, with which the mouth is rinsed, provided they are not swallowed in a large quantity, but are mixed with saliva, which cannot be avoided." And the rubric teaches the same, saying: "The same should be said (namely, that it does not break the fast) if, while rinsing the mouth, a drop of water is swallowed unintentionally"; therefore, if water is swallowed unintentionally, the fast is not broken (8). There is no doubt that the fast is broken if, before midnight, one puts something made of sugar or honey in the mouth and then swallows it. The same applies to one who swallows blood soaked in a finger, or tears flowing from the eyes; thus, the doctors commonly teach. And they say the same about one who, by chance, falls into a river, or is forced to swallow water or other drink by others (9).

38. The second rule is that, to break the fast, something must be taken in the manner of eating or drinking; therefore, commonly, di- (1) In 4. d. 8. q. r. a. 4. solut. q. 2. — (2) Lib. 6. n. 278 et 279. — (3) N. 279. v. Secus vero. — (4) 5. p. q. 80. a. 8. ad 4. — (5) Lib. 3. e. 12. — (6) Lib. 6. n. 279. — (7) Ibid. Dubit. 2. — (8) Ibid. v. Idem. — (9) Ibid. v. Idem.

[*Latin ed. p. 383*]

ON THE DISPOSITION OF THE BODY. 371. Suarez, Lugo, Conc. Holzm. Ronc. Escob. Croix, Elb. (whatever some few may say) do not consider the use of tobacco through the nose to break the fast, even if some of it descends into the stomach, for the reason stated above; because such a passage is not by way of eating, but by attraction, or at least, so says Benedict XIV in his Decrees (1), that is, it is permitted because of its universal acceptance among the faithful. And here it should be noted what the same Pontiff mentions, namely, that Innocent X and Innocent XII imposed excommunication on those who smoked tobacco in the Vatican church; and Urban VIII imposed the same penalty on churches in Spain; but Benedict XIII removed all these prohibitions (2). 39. Likewise, the smoke of tobacco inhaled through the mouth does not break the fast, as also commonly taught by Suarez, Villalob, Trullenc, Salm, Aversa, Holzm, Viva, Croix, Spor., etc., as also by Benedict XIV (3), who likewise testifies that this is the current custom, confirmed by the common consensus of doctors. However, Salmantinus

limits this, saying that it does break the fast if the smoke is deliberately directed into the stomach, saying that this would be true eating, since such smoke would also nourish in some way; but this limitation is commonly and more probably denied by Escob, Praepos, Marc, Viva, Spor, Renzi, Tab. Ditana, etc. The reason is that the smoke is not taken in by way of food, as stated in the third rule, nor is it truly food in itself, or something edible that the Church wishes to prohibit, according to the common opinion of doctors (4). 40. Nor does the use of tobacco, or aromatic substances rubbed on the teeth, break the fast, provided the juice is always spat out; so also commonly teach Lugo, Holzm, Bonac, Spor, Coninch, Praepos, Trullench, Salm, Viva, Renzi, etc., against Henno, who maintains that when these things are used, some portion is always transmitted into the stomach, and therefore, as he says, saliva is ejected. But Cardinal Lugo replied that for saliva to be ejected, it is not necessary for the juice to descend into the stomach, but it is sufficient that tobacco be applied to the mouth; for in this way, the virtue of ejecting saliva is introduced into the stomach through the nerves that correspond to the stomach. And this, as Tannerus, Lugo, Escob, Tamb, Viva, etc., say, even if some juice, inextricably mixed with saliva, is swallowed, but unintentionally, because then it is not transmitted by way of food, but by way of saliva. Indeed, Lorichius excuses even if a whole grain is swallowed by accident; but this is not rightly admitted by Bonac and Tamb; it would be different if a very small particle were unknowingly mixed with saliva, because then it would truly be transmitted by way of saliva. However, all agree that such mastication is indecent before Communion, and is therefore not exempt from venial sin, unless there is some excusing cause (5). 41. Suarez, Fagund, and Tambur, etc., do not even consider the passage of water through the nostrils into the stomach to break the fast, as has been said about tobacco. But I do not admit this, if someone does it deliberately, and what I think about water, I also think about tobacco, and about anything that can be digested: because although this action is not in itself nutritive, nor is it by way of eating, but only by attraction, nevertheless, when it is done deliberately, and is ordered by a person to transmit something into the stomach, then that action, by equivalence, acquires a moral quality (1) Book 1, chapter 13. — (2) Book 6, number 280. — (3) On the Sacrifice of the Mass, book 3, appendix 9, 2. — (4) Book 6, number 280, Doubt 2. — (5) Number 280, Doubt 3.

[*Latin ed. p. 384*]

372. TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. The act of drinking or eating; for already there is present either the material that is drinkable or edible, or an action suitable for achieving the same end as drinking or eating (1). Conversely, if something is accidentally swallowed. And the authors of Navarre, Suarez, Lugo, Habert, Concina, Roncaglia, Salamanca, etc., commonly state that if something is swallowed by means

of respiration, such as a small amount of dust dispersed by the wind, or a fly, or a drop of rain, and this happens accidentally, it does not break the fast; but it does break the fast if it is done intentionally, because then a true act of eating occurs (2). 42. – III. RULE: To break the fast, it is necessary that something be taken in that has the nature of food or drink. Therefore, the question arises whether swallowing hair, nails, stones, wood, paper, and similar things, prevents Communion? Some universally deny this, as Ledesma, Busembaugh, Diana, Renzi, etc., state, based on the application of the rule mentioned above, namely, because these things do not have the nature of food, at least because they are not considered as such in common usage. Others, on the other hand, universally affirm this, as Layman, Castrop, Wigandt, Roncaglia, and Salamanca state, saying that reverence for the Eucharist requires that nothing be swallowed before it. However, the more common opinion, and the one that appeals more to me, is that of Concina, Lugo, Tournely, Escobar, Holzmann, Viva, Sporer, and others, who distinguish, stating that those things which are not digestible do not break the fast, such as hair, metal, crystal, nails, and silk or wool threads, because these do not nourish, nor do they have the nature of food. The opposing side cites St. Thomas in their favor; but we demonstrate in the moral work of St. Thomas that he does not contradict our opinion, at least not openly (3). 43. – Conversely, everything that can be digested breaks the fast, namely, those things that can be altered in the stomach and converted into the substance of a person, such as paper, straw, thread, medicinal powders, wax, because these ordinarily retain something of honey; and Lugo, Wigandt, Escobar, Viva, and Mazzotti state the same regarding earth, or clay, which women sometimes eat, because it is always (as they say) found in the stomach to be alterable, and therefore nutritious (4). 44. – Note 1. Celebrating immediately after a late and indigestible meal does not prevent Communion, according to the precept of fasting, as commonly taught by Suarez, Juvenal, Bonaventure, Soto, and Navarre, etc.; however, Tournely and Concina, with St. Thomas (5), rightly point out that sometimes it is fitting to abstain from Communion because of a dullness of mind, by reason of which a person becomes unfit to receive this Sacrament. But this is not to be understood when the Sacrament is offered, since it is fitting that one be freed from such dullness, and that one approach the Sacrament devoutly, especially if the wakefulness or indigestion resulted from a just or natural cause, as we will say in number 56 in a similar case (6). 45. – Note 2. Spitting out immediately after Communion does not incur guilt, provided there is no suspicion that any fragment remains in the mouth; so say Sanchez, Azorín, Bonaventure, Wigandt, Holzmann, and Croix, citing St. Thomas. Holzmann also states that eating or drinking immediately after Communion is permitted, because although in the past, according to chapter 3 of the De Consecratione, dist. 3, the fast had to be maintained until the sixth hour, nevertheless, as St. Thomas testifies (7), this precept

has long been abrogated. However, to do so without a cause is forbidden.

(1) Ibid.

(2) Ibid.

(3) No. 25.

(4) Ibid. See the opposite.

(5) 5th part, question 80, article 8, ad 5.

(6) Book 6, No. 28y, see the last line.

(7) 6th part, question 80, No. 6, ad 6.

[*Latin ed. p. 385*]

ON THE CONDITION OF THE BODY. 373. While the species of the sacred Host remain in the stomach (at least for a quarter of an hour for priests), one is not excused from venial sin; thus, generally, Suarez, Aver. Quarti, and the Dicasterium, citing St. Thomas. He adds that there should be some interval between the reception of this Sacrament and other food. This is said without cause, because any just cause excuses, e.g., if a meal were offered to a religious, etc. (1). 46. Let us now consider in which cases the Eucharist can be received by one who is not fasting. I. When Communion is given as Viaticum in danger of death. It is said to be in danger when it is not necessary, nor is it laudable, to wait for the time when there is no longer any hope of life to receive Viaticum; but it suffices that there is a probable danger of death. And then the doctors do not doubt that Viaticum can be received several times, even during the same illness, since this Sacrament is not only to be taken to satisfy the precept, but also for strength against temptations which are more powerful and dangerous in death. And this is true not only if a new danger arises, but also if the same danger persists: thus, generally, Sot. Suarez, Tolet. Laym. Sylvest., etc., and Benedict XIV, who urges bishops to instruct their priests that they should administer Viaticum to the sick even two or three times during the same illness (2). 47. What is doubted is 1. how much time should pass between one Communion and another; generally, Sylvest., Concina, Tourn., Busemb., Salmant., etc., say eight days; others say six, as Armil., Filliuc., Diana, Possev., etc.; and Laym., Escob., Roncag., and Hurtad. confidently say that Viaticum can even be repeated the next day, if the sick person was accustomed to communicate frequently, and if the danger of death is imminent; indeed, Castrop., Armil., Tambur., and the Dicasterium admit that it can be repeated on any day (3). 48. It is asked 2. whether one who has communicated a few days before out of devotion is obliged to receive Viaticum if a danger of death arises? Some, with the more common opinion, deny this, even if he communicated eight days before; thus, Laym., Suarez, Conc., Ronc., Bon., etc., because, as they say, he has already prepared himself for death through that Communion, and therefore has already satisfied the purpose of the precept. This opinion is quite probable, at least as Suarez

and Lugo say, if the danger of death arises naturally, because at the time of the Communion taken, the danger of death had already begun to loom morally. But Vasq., Castrop., Conc., Tourn., Habert, Diana, Salm., etc., more probably affirm that this precept, which is divine, precisely obliges when the danger of death is imminent; and just as one cannot properly satisfy it before it is incurred, so neither can the precept be fulfilled before it begins to obligate. It is not valid to say that the purpose of the precept has already been satisfied through that Communion, because if this were sufficient, it would also be sufficient to fulfill the Paschal precept, if one communicated on the Sunday before Palm Sunday; but this cannot be said (4). 49. It is asked 3. whether one who communicated in the morning out of devotion should or can receive Viaticum if a danger of death arises? There are three opinions. The first says that one is obliged to satisfy the precept. The second says that one is not obliged, but can; thus, Roncag., Gob., Anact., etc. The third says that one is neither obliged nor can, since the practice of the Church is that one does not communicate twice in the same day. Benedict XIV, in Syn. l. 7, c. 11, n. 2, says that the priest can (1) Lib. 6. n. 255.—(2) De Synodol. 7. c. 12.—(3) Lib. 6. n. 255. v. Sed. dubit. L. 1. 1. This. Dubit. lib.

[*Latin ed. p. 386*]

374 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. He who prefers to embrace these opinions, considers all three to be probable. However, among these, the opinion of Cardinal de Lugo seems more probable to me, who distinguishes and says that in a violent illness, for example, if someone has been wounded or has fallen from a height, he can receive Communion; but in a natural illness, because the one who received Communion in the morning has already begun to be afflicted by the illness (which is later recognized as mortal on that day), he morally received Communion in a state of mortal danger, which was already present in the morning, even if it was not yet apparent. The same should be said concerning apoplexy, as this illness is judged to have already existed in the patient's condition beforehand (1). It should be noted, with Viva and Salmant, that if the sick person can receive the viaticum without difficulty while fasting on the following day, he is obligated to wait; unless, meanwhile, there is a danger of death; or if it is not possible to observe the fast even the following day, lest a suitable remedy be omitted; or if the sacrament must be administered late at night. However, Sotus, Navarrus, Filliucius, Salmeron, and others commonly state that one must not be scrupulous in this matter, since the Council of Constance, Session 13, absolutely exempts the dying from the law of fasting (2).

50. — Question 4: Can the priest administering the viaticum ever, for a just reason, omit those words: "Receive, brother, the viaticum, etc."? The Clericati of Tambov, Quarti, etc., deny this, because the Roman ritual ex-

pressly commands it; and Paul V, speaking of the rubrics prescribed in the ritual, says: "They must be observed inviolably." Nevertheless, P. de Alexand., Tonellius, and Pasqual, probably allow it in the case where the sick person is experiencing great sadness at the prospect of receiving the viaticum; for, in order to fulfill the precept, it is not necessary to have the intention of fulfilling it; but it is sufficient that the act of fulfilling the precept be performed, as we said above, in Tractate 2, no. 29; or that there be an interpretative intention. As for the ritual, they respond that that precept does not refer to everything described therein, but only to those things which the Church and the approved usage of antiquity have established, as the bulla states. At least, it cannot be said that the precept of uttering those words imposes a grave obligation, but only a light one, from which any just reason can excuse. Such as the one mentioned above (3).

51. — Question 5: Can a priest who is not fasting celebrate Mass to administer the viaticum? The Council of Majorca, Fernand, etc., probably affirm this, and Lugo, Filliucius, Escobedo, Viva, etc., admit this opinion as probable; because, they say, in that case, the divine precept that obliges the sick to receive the viaticum must be preferred to the ecclesiastical precept that obliges the priest not to celebrate Mass while not fasting. But most commonly, and more probably, Sotus, Silvanus, St. Antoninus, Suar, Lugo, Navarrus, Busembach, Salmeron, Tournhem, etc., deny this, because the precept not to celebrate Mass after having eaten is also a divine precept in substance, by reason of the reverence due to the Sacrament. It is not valid to say that the same precept that allows the sick person to receive Communion while not fasting, also allows the priest who is not fasting to celebrate Mass, so that the sick person may receive Communion; because it is answered that the sick person who is not fasting can receive Communion only because, in his case, both the ecclesiastical precept of fasting and the divine precept of receiving the viaticum are present, and therefore, since the latter is divine, it must be preferred; but the priest who is bound by the single precept not to celebrate Mass while not fasting, cannot violate this in order to fulfill the sick person's obligation (4).

(1) Book 6, no. 258. Doubts III.

(2) Ibid. See "Hic autem."

(3) Ibid. See "Dubit. 4."

(4) No. 236. See "Quæritur quantum."

[*Latin ed. p. 387*]

ON THE DISPOSITION OF THE BODY. 375 52.—Thus far concerning the viaticum; now let us descend to other cases in which the Eucharist may be received by one who is not fasting. II. It may be received by one who is not fasting if there is a danger that the Eucharist will be lost or treated improperly. And in such a case, a layperson may receive it even if a priest is

absent; and a priest may lawfully offer it to laypersons who are not fasting, as Suar., Vasq., Lugo, and Busemb. state (1). 53.—III. If there were a danger of scandal if the celebration or communion were omitted. Therefore, if a priest, while celebrating, remembers that he is not fasting, and this occurs after the consecration, it is certain that he can continue the celebration, because an imperfect sacrifice cannot be abandoned, as we shall say in the following number; but if he remembers before the consecration, he should cease the Mass, always and whenever it can be done without scandal or notoriety, as all, along with St. Thomas, state (2). Nevertheless, P. Concina, along with some others, says that this scandal rarely occurs, since it can easily be avoided by declaring that he has inconsiderately taken something. But, on the contrary, St. Bonaventure, Sotus, Angelus, Regin., etc., state that a priest can never abandon a Mass that he has begun, when he is celebrating publicly, because it is almost never possible to do so without scandal, and Tourn. expresses the same sentiment (c), stating that there is always a danger of scandal, unless the celebrant is not a man of note, or at least of presumed integrity (3). 54.—IV. When the sacrifice must be completed. This can happen in various ways. I. If the priest realizes that he has taken water instead of wine, etc.; then he can either consecrate a new host along with the wine, as many believe should be done, or he can consecrate only the wine, as others admit; both opinions are considered probable by the rubric (de Defect. tit. 4. n. 5.), if the celebration is in a public place; then it is certainly permissible to consecrate only the wine in order to avoid scandal. Tamb., Lugo, and Conc. point out that if the priest realizes the error while still holding the water in his mouth, he should swallow it at that time, so as not to expose himself to the danger of ejecting a fragment of the host along with it. Furthermore, Coninc., Laym., Salm., and Busemb. point out that if the priest realizes this after he has returned to the sacristy, he should omit the new consecration. If, however, after the absolution of the Mass, but after the taking or after the consecration of the wine, there is doubt about the material, Tamb., Spor., Mazzot. state that the suitable material should be presumed, saying that possession stands for the substance of wine. But Vasq., Gob., Avers., and Eroix state that there is always a prudent doubt, and that another wine should be obtained and consecrated, and that it should be waited for, and consecrated, since it cannot be said that the wine in question is in possession, but rather the precept of performing the sacrifice completely. However, if such a doubt exists, they state that, according to the wine, it should be consecrated under the condition that the first material was not consecrated; otherwise, there is also the danger of performing a mutilated sacrifice (4). II. The sacrifice must be completed by a priest who is not fasting, if it should happen that the celebrant becomes incapacitated after the consecration; then another priest (if present), even if he is not fasting, is obligated to complete the sacrifice (5). III. If, after the consecration of the other species, a priest remembers that he is not fasting,

he is obligated to complete the sacred rite. Cited (1) Lib. 6. n. 287. — (2) 3. p. q. 83. & 6 ad 2. — (3) Lib. 6. n. 287. v. 3. Si grave, et seq. — (4) N. 288. et etiam 206. v. Quod vinum. — (5) N. 288. ad II.

[*Latin ed. p. 388*]

376 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. It is permissible, for it is necessary to abstain from it, whenever it can be done without scandal or infamy, as we said a little earlier (1). IV. If, after receiving the ablution, the priest notices that some relics of the same sacrifice remain, as we said in number 38 (2). Bonaventure, Filliu, and others say that, after receiving the blood, if a particle of the host adheres to the chalice or the palate, it is more fitting to receive it with the ablution than to draw it towards the edge of the chalice with a finger and then consume it; but the rubric allows both. It is certain that the host should be received together with the ablution, both by the priest and by the laity, without violating the law of fasting, because, as taught by Benedict XIV (3), and commonly by Lugo, Suarez, Vasquez, Laym, Castr, Conc., Bonaventure, Holzm, Croix, etc. (4), if wine were to be consumed before the host is swallowed, such consumption is considered morally one. 55.—V. It is permissible to celebrate without fasting in order to avoid the danger of death; so say Sylvester, Viva, Diana, Salm, etc., provided that this is not demanded out of contempt for the Church. Sylvester and Diana also admit that Mass can be celebrated out of fear of death without sacred vestments, outside the altar, etc., saying that the precept of the Church does not impose such a burden. However, Suarez, Famb, Fourn, Merati, Ronc, Conc., Cajet, Sanch, Castrop, etc., do not admit these opinions, even if it were to be celebrated to give communion, as Lugo, Dicast, and Benedict XIV add (5), because (as La Croix rightly points out) in practice, contrary opinions cannot easily be permissible, since, when celebrating in this way, it is difficult to avoid contempt, as Laym and Escob admit (6), or at least scandal and grave irreverence: therefore, the natural precept of reverence due to the sacrifice is not excused by fear of death. 56.—For the completion of this subject, namely, the dispositions for communion, it is asked: whether a pollution experienced on the same day of communion prevents one from receiving it? It must be distinguished: if the pollution was voluntary, absolutely speaking, it does not, in itself, prevent (provided that, that is to say, due confession has preceded), as all concede; however, the doctors commonly teach that the penitent should abstain from communion on that day out of reverence for the sacrament: so say Lugo, Salm, Conc., Viva, etc., from St. Thomas (7), who, however, makes an exception: "Unless a great necessity urged"; which is understood, as rightly say Bonaventure, Led, Grand, Salm, Viva, and others, unless scandal or another just cause requires communion, as a prudent confessor will judge, as the rubric of the missal says (de Defect. n. 9). If, however, the pollution was involuntary, even

commonly, St. Bonaventure, Gerson, Navar, Laym, Soto, Suarez, Vasquez, Salm, and many others, with the rubric cited above, teach that there is no obligation to abstain from communion; unless there remains and still persists a disturbance of the mind arising from the pleasure previously experienced, or from a shameful imagination accompanying the pollution; for with such a disturbance, one is commonly not excused from venial sin, unless there is a just cause of necessity, or of devotion, as rightly limit Castr, Sanch, Gers, Laym, Holzm, Salm, and others with St. Thomas in the same place, who says: "If necessity threatens, or if devotion demands, such a person is not prevented." Or unless the person tries, as much as possible, to repel that disturbance, and uses means to approach devoutly, as all the aforementioned authors reasonably teach. (1) Book 6, number 287, see if the priest and 288 to III. — (2) Ibid., to IV. — (3) De Sacrific. Missae, book 3, chapter 17. — (4) Book 6, number 288, to V. — (5) De Sacr. Missae, book 3, chapter 7, page 1, at the end. — (6) Book 6, number 289. — (7) In 4 d. 9, q. r., article 4, question 2, answer 2.

[*Latin ed. p. 389*]

ON THE DISPOSITION OF THE BODY. 377 Suarez, citing Justin, states that it is not fitting, due to this involuntary passion, to abstain from the sacraments (1). 57.—The question is raised: Does marital intercourse prevent Communion? While some may say otherwise, the common teaching of the doctors is that one who approaches the Eucharist on the same day as having intercourse for the sake of pleasure is not excused from venial sin; thus, St. Thomas (2), following St. Gregory in c. Vir, 7, causes 3, q. 4, who says: "But when love for the sake of procreation does not govern the act, but rather pleasure, then one should be forbidden to approach this Sacrament." However, Sanchez, Antoine, Salm, and others rightly state that any honest cause excuses one from this sin, such as a solemnity, or an indulgence occurring on the same day, the avoidance of scandal or notoriety, a special devotion, etc. However, if the intercourse is without sin, e.g., for the purpose of procreation, then, although it may be fitting to postpone Communion to another day, there is no obligation to abstain; for procreation, being a wholly honest act, sufficiently compensates for the impropriety, as commonly stated by St. Thomas, in the aforementioned passage, as well as Lugo, Sanchez, Conc. Petrocor, Salm, etc., following St. Gregory. Nor does the passage in c. Sciatis, causes 33, q. 4, where St. Jerome teaches that one should abstain, present an obstacle; for the Angelic Doctor (3) responds that the statement refers only to married altar ministers, such as the Greeks (4). It is also commonly taught that a spouse fulfilling their marital duty can only abstain from Communion out of prudence, but is not obligated to do so; thus, St. Thomas, St. Bonaventure, St. Antoninus, Albert, M. Dian, Carthusian, Sotus, Paludanus, Suarez, etc. And so, St. Francis de Sales (5) also taught, saying: "It displeased God in the old law that cred-

itors should demand what was owed them on festive days, but He never forbade debtors from paying their debt. It is improper to perform the solution of the marital debt on the day of Communion; but it is not inconvenient, indeed, it is meritorious to fulfill it. Therefore, one should not be deprived of Communion if they require it to fulfill this duty. It is certain that in the primitive Church, the faithful communicated on any day, even if they were married, and had been blessed with the gift of children." Augustine (6) also seems to have taught this clearly, saying at the end of Psalm 149, n. 14: "If you do not demand it, give it; God will count it as perfect satisfaction if you give what is due to your wife." Indeed, if the rendering of marital duty is an act of virtue, why should it prevent Communion (7)? Therefore, if a confessor is asked by a wife what she should do if her husband asks her for this duty on the day of Communion, Suarez, Layman, and Sanchez wisely teach that if the wife frequently receives Communion, she should fulfill her duty and communicate; but if she rarely does so, she should ask her husband to abstain for that day; but if the request is unsuccessful, she should still communicate, unless she suffers great disturbance by doing so, and she does not try to repel him (8). However, to render the marital debt on the day of Communion after receiving Communion is excused from all sin. To ask for it after Communion, some say is venial, and indeed probably so, unless there is a just reason; but commonly Sanchez, Navar, Victor, and Tamburini hold that it is only a matter of prudence (9). 58.— The disposition of the body also includes the fact that one should not (1) Lib. 6, n. 272. — (2) 3a, q. 80, art. 7, ad 2. — (3) In 4d, 32, q. r, a 1, ad 1. — (4) Lib. 6, p. 273. — (5) Introduct. ad vitam devot., p. 2, c. 20. — (6) Lib. 6, n. 274. — (7) Ibid., v. Quid autem. — (8) Ibid., v. Die autem. — (9) Ibid., v.

[*Latin ed. p. 390*]

TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST.

It is permissible to approach the Sacrament with some external impurity that is noticeable and easily removable; for if it is hidden or permanent and involuntary, such as leprosy or scabies, these do not prevent Communion, as the Doctors commonly say. However, it must be noted that a priest afflicted with leprosy or another disease that causes horror is prohibited from celebrating, as is stated in the decree *Tus nos*, concerning sick clerics, because of the scandal and abomination to the people, as the text says; therefore, he can celebrate secretly (1). Can women who are menstruating receive Communion? Suarez says that they should be excused from receiving Communion if they can conveniently postpone it; but Paludanus, Alensis, Castrop, Salm, and Layman, citing St. Gregory (in Layman), believe that this is only a matter of counsel. Layman quotes St. Gregory as saying: "If she does not presume to receive out of great reverence, she is to

be commended; but if she does receive, she is not to be judged." It is fitting that those who approach Communion immodestly, for example, with an uncovered bosom, be denied Communion, as Father Concina rightly says. Furthermore, it is fitting that one who receives Communion lay down his arms (2). It must also be noted that a priest who receives Communion in the manner of a layman, either through infirmity or for another reason, should wear a stole around his neck; and this precept was established by the Council of Braga under pain of excommunication, as in canon 9 of the *Ecclesiastica*, Dist. 23; but Azor, Turr, and Tamb say that such a decree has fallen into disuse. Nevertheless, Suarez, Gavant, Bonac, and Barb do not condemn such a person as committing a mortal sin, but a venial sin; all the more so because this custom is expressly prescribed in the rubric: "Priests, however, celebrate with a stole (3)."

CHAPTER IV. ON THE SACRIFICE OF THE MASS.

See what is said in the examination of those to be ordained, in Appendix III, below.

It is lawful to receive a stipend, even for the wealthy.

He who receives a double stipend for a single Mass.

What is considered a just stipend?

A larger fee may be demanded, but a smaller one may be prohibited; can he who receives a smaller amount reduce the number of Masses?

He who omits celebrating the Mass which he promised for a small stipend.

He who bargains about the stipend.

He who retains a portion for himself, or celebrates through another, to whom a smaller stipend is given; and to whom the retained portion must be returned.

If a very generous offering is given with the intention of influencing the celebrant.

Concerning chaplains.

Concerning administrators of churches.

If the celebrant retains a portion; and if the executor of a will, etc.

He who collects alms, etc.

He who exchanges Masses.

For whom Curates should apply Masses.

For whom other beneficiaries and chaplains of nuns, etc., should apply, and whether they can sometimes apply for others, or abstain. If they are infirm, etc. Concerning the conventual Mass.

Are Masses prescribed?

Can a chaplain change the church, altar, etc.? If he does not celebrate in

the privileged altar. If he celebrates through another.

Concerning reduction.

If revenues are lacking, can the Bishop reduce the number of Masses?

Can a chaplain do this?

Concerning Gregorian Masses.

Can a religious person apply against the will of the Prelate?

Is a habitual application sufficient?

Concerning application in a general way.

Concerning conditional application.

If on the Feast of All Souls, etc.

Concerning the privileged altar.

Those who celebrate hastily sin gravely.

Concerning the resolutions of the Sacred Congregation of Rites.

Catalog of Decrees of the Sacred Congregation. 59.

Concerning the Eucharist as a sacrifice, see more fully in the examination of those to be ordained, Appendix III, from n. 95 and following; we will note here only some more specific points concerning the stipend and the application of Masses. And first, concerning the stipend, we say that it is lawful to receive a stipend for celebrating Mass; no one doubts this, as St. Thomas says: (4) "A priest does not receive money as a price for consecration, but as a stipend (1) Lib. 6, n. 275. (2) Ibid., v. Auvero. (3) N. 276. (4) 2-2, q. 100, a. 2, ad 2.

[*Latin ed. p. 391*]

OF THE SACRIFICE OF THE MASS. 379 "for his sustenance." And because even the wealthy are worthy of compensation when they perform a work of worthy value, therefore, priests who are wealthy may lawfully demand a stipend, as commonly taught by Sotus, Gerbert, Suarez, Thomas, Lugo, Tournhem, the Council, and others (1). We have already discussed above, in section 4, paragraph 45, that it is not simony to celebrate the Mass for a stipend, and we refuted the argument based on St. Thomas, because such a stipend is not received as payment for a spiritual service, but as sustenance for the person who expends his physical labor in celebrating the Mass.

60.—Note 1. Two propositions promulgated by Alexander VII; the first, number 8, stated: "A priest may lawfully receive a double stipend for the same Mass, applying to the petitioner a portion of the special fruits thereof, corresponding to the celebrant himself; and this after the decree of Urban VIII." The reason for this prohibition is that the application of special fruits is too uncertain; for while many doctors admit it, many deny it, as Layman, Lugo, Suarez, Vasquez, Tamburrini, etc. The second proposition, which is number 10, stated: "It is not contrary to justice to receive a stipend

for several sacrifices, and to offer only one sacrifice; nor is it contrary to fidelity, even if one promises, even by a vow, to give a stipend for no other offering." The reason for this prohibition is that, although the opinion of Gonet, Habert, Petrocorio, Pignatelli, Tournhem, Cani, Salm, etc., and even St. Thomas (2), is probable, that the Mass is of infinite value, both intensively and extensively, because the sacrifice of the altar is the same as that of the Cross, which was of infinite value; and that its effect is finite, because the capacity of man for whom it is offered is finite, so that each person receives the fruit according to his capacity; nevertheless, the opposite opinion is also probable, as stated by St. Bonaventure, Scotus, Paludanus, Roncaglia, Sotus, etc., who say that the sacrifice is of finite value, both intensively and extensively, so that when it is applied to many, it benefits each one less than when it is applied to only one person (3).

61.—Note 2. The amount of a just stipend for the Mass should not be calculated according to the amount of daily sustenance, as Cajetan and Sotus say, since the priest does not devote more than a minimal part of the day to celebrating the Mass; but rather, it is that amount which is determined either by the diocesan synod, or by custom, or by the local bishop, as commonly stated by Suarez, Busembach, the Council, Tamburrini, etc., and as declared by the Holy Congregation (4). And it is necessary to adhere to this amount, as commonly stated by Vasquez, Molinos, the Council, and Vivacqua, along with another declaration of the Holy Congregation (5). Therefore, Roncaglia rightly says that if a testator leaves Masses to be celebrated, they are to be celebrated at the common rate, or to be assessed according to local custom, as also declared by the Holy Congregation, taking into account the richness or poverty of the inheritance (6).

62.—Note 3. Although priests cannot demand a stipend greater than the established rate, custom does not prohibit it; nor can the bishop prohibit the acceptance of a sum greater than usual, if it is offered spontaneously, as rightly stated by Lessius, Lugo, Suarez, Bonaventure, along with a decree of the Holy Congregation (7). On the contrary, the bishop can rightly prohibit the acceptance of a stipend that is less than a just price, at least the minimum, which is the value of a carolus, or (1) Lib. 6, n. 516 and 517. — (2) 3a, q. 79, a. 5. — (3) Lib. 6, n. 312, v. Hic autem. — (4) N. 519. — (5) N. 320. — (6) Ibid., Dubit. 5. — (7) Ibid., Dubit. 2.

[*Latin ed. p. 392*]

380 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. July, as declared by the Sacred Council, and as taught by Suarez, Bona, Ronc, and Lambertini, Notification 56, number 11, against Soto and Navar, who cite St. Thomas (1), and in the case where a bishop prohibits [something], the subjects are bound to obey, even if Soto's opinion were probable; for in doubt as to whether a superior exceeds his authority, the subjects are bound to obey (2); see the aforementioned passage in Tractate 13, number

17, regarding note 5. However, in the case where a priest has accepted a smaller sum than is due [for a Mass], which some authors claim, he cannot diminish the number of Masses, nor can he apply one Mass for two, who have offered half the sum for each Mass, as decreed by Innocent XII in his Bull "Nuper," confirming the decree of the Sacred Council issued by order of Urban VIII (see decree number 88, Decrees II, at the end of this treatise). However, this is understood when the priest accepts to celebrate a certain number of Masses for such a sum; otherwise, when he does not notice the inadequacy of the alms, as noted by Laym, Barb, Ronc, Tourn, etc. Furthermore, a priest who promises an heir that he will celebrate a Mass for the testator, having received his word of payment, is bound to celebrate it before payment; so say Salm, Tapia, Villalob, etc. (3). 63. — But the question remains whether one who promises one Mass for a small sum sins gravely if he omits it? Castrop, Sporer, Salm, etc., deny this, considering the sum to be insignificant. However, Croix, Holzm, Ronc, etc., argue that it is more probable that one does sin gravely, because in this case, not only is the value of the sum considered, but also the gravity of the damage caused to the person, unjustly depriving him of the fruit of the sacrifice (due to the agreed-upon agreement). Others, however, say that if the Mass has been promised for free, according to a probable opinion, as we said above in Tractate 10, number 127, that simple promises do not create a grave obligation (4). 64. — Note 4: It is permissible for a priest to agree on a sum for a Mass, when it is according to the established rate or custom; this is generally held by Less, Laym, Castrop, Soto, Ronc, Salm, against P. Concin, because although the sum is not due by law as a price for the sacrifice, it is due by law as support for the priest, and therefore it can rightly be included in an agreement. Nor does the canon "de pactis" (regarding agreements) object, where all agreements concerning spiritual matters seem to be prohibited, because this, as Ronc rightly points out, refers only to illicit agreements, when it is said there: "For a shameful agreement, or one concerning a shameful thing, creates no obligation." Indeed, these agreements are condemned by the Council of Trent (Session 22, decree on the observance of the celebration of Mass), concerning alms for Masses, where bishops are commanded to prohibit importunate and ungenerous demands for alms: it is called "ungenerous," namely, those which are not offered spontaneously, but are extorted by importunity (5). 65. — Note 5: If someone receives an alms for a Mass, he cannot give it to another to celebrate, retaining a portion of the sum for himself. This is established by the decree of the Sacred Council, approved by Urban VIII, and confirmed by Innocent XII (see number 88, Decrees III); then, this proposition was condemned by Alexander VII: "After the decree of Urban, can a priest, to whom Masses are assigned, fulfill them through another, with a smaller sum, retaining a portion of the sum for himself?" These authors said this falsely, wrongly supposing that the decree of Urban

(1).

[*Latin ed. p. 393*]

OF THE SACRIFICE OF THE MASS. 381, it was not accepted. Most recently, however, Benedict XIV, on June 30, 1741, in his bull *Quanta cura*, imposed a suspension *ipso facto* reserved to the Pontiff for clerics, and a papal excommunication for laymen who would do this. Some doctors, however, stated that the priest who does this, although he sins, is not obliged to restore the portion retained; thus Suar., Nav., Vasq., Bonac., etc.; and Viva says that this opinion is not without probability, since he who receives the stipend has already acquired ownership, and has already satisfied the obligation of the celebration through another; but this opinion, after the aforementioned proposition has been condemned, seems unable to be maintained, and therefore, after this condemnation, Vidal, Coreglia, Croix, Spor., Holzm., Conc., and Mazzot commonly say that the priest is obliged to restore; because although he acquires ownership of the alms, nevertheless he acquires it according to the will of those who give the alms; and he who gives the alms not only asks for a Mass, but also wants it to be celebrated with that very alms, because he makes a larger offering so that he himself may receive a more abundant fruit from the sacrifice; and this intention enters into the substance of the contract, and therefore, if the priest retains a portion of the stipend, he unjustly retains it against the will of the giver (1). Furthermore, it should be noted that Croix, Pasq., Conc., and Viva say that if someone gives a large alms to a priest, because he holds him in particular esteem, the priest cannot offer the Mass to another who is not held in similar esteem, even if he offers him the full stipend. However, Croix and Concina say that this is not to be condemned under pain of excommunication, unless it is judged that this was seriously intended by the giver (2). To whom, however, should the restoration of the portion of the stipend, which has been retained, be made? Croix and Pasqual think that it can be made either to the giver or to the celebrant. But Spor., Holz., and Tourn. say that it should be made to the celebrant, because when the obligation of celebrating is transferred to him, the right to the entire stipend, according to the will of the giver, is also transferred (3). 66. Therefore, when an alms is received for a Mass, it must be fully given to the celebrant, except in the first place if that stipend were given to someone else, not only for the sake of the sacrifice, but also with a view to the person, the connection, the gratitude, or the poverty, or the like. And it is not necessary that the giver of the alms express this, but it is sufficient that it morally follows from the circumstances, as commonly say Passer., Mendo, Ronc., Dicast., Viva, and others (4). 67. Exceptions are: 1. Chaplains and beneficed priests, who can entrust the celebration of Masses to others, having been given the customary stipend; thus, commonly, the doctors, and it is clear from the approval of the same Innocent XII, in the cited bull *Nuper*, ibid.,

v. 2. This same thing is permitted to a removable chaplain, as Lugo, Ronc., Holz., etc., say; and so it has been declared by the Sacred Congregation; see n. 88 of Decree IV. The same is said by Viva, Croix, Gob., etc., concerning a priest to whom the celebration of a perpetual Mass has been entrusted. The same is also said by Ronc., Passer., Tamb., Ric., and others, concerning a priest who is to celebrate for someone who has left a large legacy, which has been left to him with the obligation of celebrating Masses for the entire life of that person. The reason is because all decrees contrary to this speak only of manual Masses (5). 68. However, it should be noted that the aforementioned exception is valid for chaplains.

[*Latin ed. p. 394*]

382 TRACT. XV. ON THE SACRAMENT OF THE EUCHARIST. concerning those who administer churches; for these individuals cannot retain any portion of the stipend from Masses, nor can they use it for expenses incurred in celebrating Masses, unless others did not have revenue (1). See the decree of the Sacred Congregation, confirmed by Innocent XII, no. 88, decree V. And here, it should be noted that Innocent XII, in the aforementioned bull, *Nuper*, in the year 1697, ordered all administrators of churches to have a posted table of Mass stipends, both perpetual and temporary (2). 69.—Some doctors also object to the case in which a priest, to whom the celebration is entrusted, entirely and spontaneously relinquishes a portion of the stipend; thus, Tourn., Ronc., Viva, etc. But this opinion is no longer sustainable after the aforementioned bull of Benedict XIV, in which the same [pope] declared: "It is not permissible (these are the words of the Pope) to offer another a stipend of lesser value, even if the priest celebrating had received an alms of greater value from the same person" (3). And so, the opinion of Tamb. is not probable, who says that an executor of a will, if he were to arrange for Masses left by the testator to be celebrated elsewhere, where the tax is lower, could retain the surplus, because then that surplus would be the fruit of his industry. But this is commonly disapproved of by Viva, Diana, Ren. Ronc., and Conc., because the executor has no title by which he can retain the surplus, since he never acquired ownership of the stipend (4). 70.—It is questioned: 1. Whether a priest who collects alms for Masses can retain anything for his labor? The Council answers negatively, because Benedict condemned the one who, having collected stipends of greater value, celebrated Masses, retaining a portion for himself. Nevertheless, P. Viva affirms, not improbably, that if that sum always corresponds to the labor, and the Masses are not entrusted to be celebrated by himself, while this compensation is just and according to the will of those who offer, then it is permissible. Nor does what is said in the same bull constitute an objection, because it is understood to be prohibited when someone is deliberately sent out to collect alms, so that he might make a shameful profit from the collection of Masses of greater value, in order to

have them celebrated at a lower price; otherwise, when he is designated for that purpose by reason of his office (5). 71.—It is questioned: 2. Whether a priest who today receives a generous alms to celebrate can arrange for another to celebrate for himself, promising to celebrate for him the next day, who had promised to celebrate for the alms on that same day; but on the next day, would he offer the ordinary stipend to the priest so that he himself might celebrate the Mass that he was supposed to celebrate in the name of the other person? Croix and Mazzot affirm this, because, they say, here he does not retain a portion of the price, but exchanges Masses and days. But I adhere in this matter to P. Concina, who does not admit this, because such an exchange seems to involve a shameful profit; nevertheless, he is not correct in condemning it outright, nor do I adhere to one who would condemn it severely, especially if poverty is an excuse (6). 72.—Note 6: speaking of benefices, for which Masses are to be applied. Concerning parish priests, diverse opinions were once held; but today, by the bull of Benedict XIV, *Cum semper*, August 29, 1744, it is established that the parish priest is to apply a Mass for the people on all Sundays and feast days (including feast days, in which) (1) Lib. 6. n. 522. Dubit. 5. — (2) See Instr. Conf. Nov. part. 2. n. 406. — (3) Lib. 6. n. 523. v. Excipiunt II. — (4) N. 522. Dubit. 2. — (5) Ibid. Dubit. 3. — (6) Ibid. Dubit. 4.

[*Latin ed. p. 395*]

OF THE MASS. 383. The Pope has dispensed with certain servile works), and even when there is no suitable support, he has granted this dispensation. He declared that, if a parish has abundant revenues, it is not obligated (as some wished) to apply the Mass more frequently (1); see the aforementioned passage, treatise 7, chapter 7, paragraph 29. 73. Regarding other benefices that are not endowed, if it is not stated in the endowment that the holder is obligated to celebrate for the founder, then he is obligated to celebrate for him, as declared by the Sacred Congregation (2). The same applies to chaplains of confraternities and nuns who celebrate for the purpose of the confratres or nuns participating in the Holy Mass: they are also obligated to celebrate for them; see paragraph 88, decree VII. Nevertheless, Lezana, *Homo Beneficiorum Diana*, Stephanus Salmanticensis, and others commonly concede that a chaplain can celebrate four or seven times a year for the soul of someone closely connected to him, or a very dear friend, or a benefactor, because it is presumed that the founder consents to this; provided that he receives no stipend, as is well noted by Bonac, Gobat, Holzmüller, Paschalis Elbensis, Diana, Salmanticensis, and others. For this would be contrary to the founder's intention. Furthermore, Suarez, Azorín, Bonaventure, Sylvester, Salmanticensis, Busembach, etc., state that a chaplain can, for reasons of reverence, abstain from celebrating once a week, as is deduced from chapter *Significatum, de Præbendis*, where it is stated that chaplains are obligated to celebrate daily, provided that they

do so with due honesty and devotion. However, Lugo and Salmanticensis, along with others, commonly state that this is not understood when the obligation is directed towards celebrating in a particular church, e.g., if the founder says: "I wish that Mass be celebrated daily in this church." But it is understood only when the obligation is directed towards the priest himself, and also, as Gobat, Tamburini, and Roncaglia state, when there is no indication of the founder's contrary intention; for if it were stated in the endowment that Mass must be celebrated daily by the chaplain, or by others, then Roncaglia rightly says that no Mass can be omitted on any day, and he cites a declaration of the Sacred Congregation (3). If, however, the chaplain were to become ill, and the illness is brief, then Lugo, Lezana, Riccius, Diana, and Busembach, along with Salmanticensis, commonly state that he is not obligated to have another celebrate in his place, provided that the founder has not expressly stated that Mass must never be omitted anywhere, as mentioned above. As for what constitutes a brief illness: some have been too strict, stating that it must not last longer than ten days. Others commonly extend it to fifteen days, as Bonaventure, Anaclatus, Diana, and Elbensis state; and there is also a declaration of the Sacred Congregation on this matter, found in Pitton. Others extend it to a month, as Laym, Hurtado, and Salmanticensis state; and in this matter, the Council of Milan VII (title on the Mass) also agrees, where it is stated: "If the chaplain has celebrated for at least a year in some place, and even if he is ill for a month, he can still receive the full eleemosyna, according to the judgment of the bishop." Finally, Lugo, Navarretus, Filliucius, Dicastus, Naldini, and Leander extend it to two months, and Father Concina agrees, and Castrop, Dicastus, and Busembach consider it probable (4). It should be noted here, in passing, that the conventual Mass, which is celebrated daily by the clergy, should be applied for the benefit of the benefactors in general of each church, as commanded by Benedict XIV (5). 74. Laym, Navarretus, Tamburini, Paschalis, and Gobat state, and Gobat cites a decision of the Roman Rota, that it is possible to prescribe, both regarding the number of Masses and regarding the circumstances specified in the endowment, and they state (1) Book 6, paragraph 324, see Question II, and 325. (2) Paragraph 324, see Question I. (3) Paragraph 352. (4) Paragraph 335. (5) Paragraph 326.

[*Latin ed. p. 396*]

384 TRACT. XV. ON THE SACRAMENT OF THE EUCHARIST. It suffices to allocate 20 or 30, or at most 40, years. However, according to a more accurate opinion, such a stipulation is not permissible, since in the Council of Trent, session 23, chapter 2, concerning reforms, it is forbidden to derogate from all obligations imposed, both in the foundation and in any other pious disposition or grant of benefices; and Pope Pius IV, in the bull by which he confirmed the Council, declared null and void whatever may be done in the future contrary to it, and, as Croix and others commonly say,

a clause that annuls a decree binds even the ignorant, and affects the title and possession in cases of benefices. At least, we say that in practice, the first opinion can be considered probable with difficulty, since it is difficult to presume good faith in the case of a benefice, when rather it is presumed that those who hold it know the laws of the benefice (1). 75. Therefore, a chaplain sins who does not celebrate all the Masses prescribed by the founder, or if he does not celebrate in the church, or at the altar, or at the appointed hour, as is commonly stated in Lugo, Azor, Navarre, Tours, Salm, etc., and he sins mortally (as they say) if he frequently and without cause, or without dispensation, commits this fault. It is said *first*, frequently, because he will not sin gravely if this happens rarely, e.g., once or twice a month, and even less so if he merely changes the altar. It is said *second*, without cause, because there may be a reason that entirely excuses him, such as if the church is being restored, or if the altar is desecrated. It is said *third*, without dispensation, because the bishop can certainly grant dispensation, for example, for the sake of study, infirmity, business, or great inconvenience in reaching the church itself, or for the benefit of the church itself, or for a similar reasonable cause, as commonly stated by Castrop, the Council of Barbos, Ronc, Passer, Henriq, Busemb, Croix, Salm, Tambur, Mazzot, etc. The reason is that with such a dispensation, only the founder's will is omitted in accidental matters, and it is compensated by a greater good for which the dispensation intervenes; all the more so since the Council of Trent, session 25, chapter 4, grants bishops the power to change the last will in certain particular cases; see below, treatise 20, number 60. Nevertheless, Croix and Pasqual correctly point out that the bishop cannot grant dispensation if the testator, in designating the church and hour, had a special reason for the benefit of the people (2). Furthermore, it should be noted that there are more decrees of the Holy Council apud Ferrar. (3), where it is stated that one should always appeal to the Apostolic See for such a dispensation. If, however, a priest were to celebrate in a privileged altar and celebrate elsewhere, Ronc says that restitution is required if the alms were abundant, but not if they were ordinary; nor if he obtained plenary indulgences applicable to the dead, as Ronc, Anacl, Spor, Elbel, etc., say. However, Azor, Bonac, Navarre, Diana, Salm, etc., point out that it is not sufficient if one celebrates in another, non-privileged altar, applying indulgences of the calculation or of blessed images, because these indulgences are not as certain as those of altars (4). A chaplain also sins if he does not celebrate himself, when it is expressly stated in the foundation; otherwise, he can always celebrate through another, as Salm and Dicast correctly say. Diana, with Camp, and there is a decision of the rota and declarations of the Holy Council on this matter (5). 76. It should be noted that reduction, or moderation, or commutation (1) Lib. 6. n. 329. — (2) Ibid. — (3) Ferr. Bibl. tom. 2. v. Capellania, n. 14. — (4) Lib. 6. n. 329. v. Notand.

11. — (5) N. 330.

[*Latin ed. p. 397*]

OF THE SACRIFICE OF THE MASS. 385. The obligations of masses imposed upon foundations, which today are forbidden to bishops, by order of the Sacred Congregation, according to a decree issued by Urban VIII and confirmed by Innocent XII; see number 88 of Decree VIII. And the faculty granted by the Council of Trent, session 25, chapter 4, as explained in the aforementioned decree (whatever Salm. may say), was only granted to moderate the masses imposed upon foundations before the Council; therefore, today, the reduction is reserved to the Apostolic See alone, which is accustomed to grant it for just reasons, such as a lack of priests, a deficiency in stipends, a decrease in revenues, the construction of a church or monastery, or other necessities (1). 77. — But the question arises: 1. Can a bishop reduce the number of masses, when, due to a lack of revenues, no one is found to undertake their celebration? Pasqual, Tambur, and La-Croix affirm this; but the Fathers of the Council, based on several decrees of the Sacred Congregation, deny that bishops are permitted to either reduce or moderate the obligations of masses. Nevertheless, Fagnan, with Felin, says that this should be understood in the sense that, at the very beginning, the obligations could already be satisfied from the revenues then established; but in the case where, at the beginning, the revenues were sufficient, but subsequently, the revenues have decreased to such an extent that they are completely insufficient, then it seems that the power granted to bishops to moderate or change the number of masses, which was granted to them by common law in chapter 4, has not been taken away from them (2); and the same is said by Pasqual regarding the obligations of offices, prayers, or alms anniversaries, saying that the prohibition refers only to the reduction of masses (3). 78. — The question arises: 2. If revenues are lacking, can a chaplain reduce the number of masses, when the revenues are completely lacking, and without his fault? It is certain that the chaplain is not obligated to celebrate, according to the common opinion and several decrees of the Sacred Congregation (4). However, if the revenues are lacking in part, Escobar also holds it to be certain that the chaplain can reduce the number of masses, when the testator determined the alms, e.g., two *julios* for a mass, because, just as the number of masses should be increased with increasing revenues, so it should be decreased when revenues are lacking. A greater doubt arises whether the chaplain could reduce the number, when the testator designated a specific number of masses, and subsequently, the revenues have decreased to the point of even lacking the ordinary stipend? Tambur, Diana, Castrop, Mazzot, etc., deny this, both from the decree of Urban mentioned above, and from another decree cited by Croix, where it is said that even in this case, recourse must be had to the Apostolic See, even if the endowment is so meager (these are the words

of the decree), that no one wishes to undertake the obligation imposed. But, nevertheless, Busemb, Franc, de Lugo, Escob, Bordon, Pasqual, and others apud Roncagl., who considers it probable, say that this is according to the testator's intention, who is not presumed to have intended to obligate the chaplain to celebrate for a smaller, just stipend. But, to avoid all danger of deception, Roncagl. generally advises that recourse be had to the judgment of the bishop (which is necessarily required in this case by Croix and Tourn.), or at least to another wise man. Ronc. and Pasq. respond to the opposing decrees that this would not be a stable reduction or moderation reserved to the Apostolic See, but only a suspension of the obligation due to the lack of revenues; for the decrees speak according to the mind of the Council of Trent, session 25, chapter 4, where it does not speak of diminished revenues.

(1) Book 6, number 353.

(2) Ibid., Doubts I.

(3) Ibid., Doubt 5.

(4) Number 324, see also.

[*Latin ed. p. 398*]

386 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. some, but of alms given solely for the celebration of Masses, which are not easily found when those who celebrate require a stipend. Whatever may be the case with this opinion, Tamburini rightly points out that if a chaplain has received a larger stipend from the ordinary in the past, he is obligated in the future to compensate by celebrating the same number of Masses; for he who has previously enjoyed a benefit should now endure a hardship. It should be noted here that the so-called "Gregorian Masses" (30 in number) have been prohibited by the Holy See for various reasons, because they were to be celebrated for the dead, even successively on double feasts; however, they are not prohibited if those 30 Masses are celebrated according to the custom of the days (1). 79. — Let us now speak secondly of the application of the Mass. It is only the priest who can apply the fruit of the sacrifice; therefore, if a religious person applies a Mass against the will of his superior, he does so illicitly, but validly, as rightly taught by Suarez, Vasquez, Layman, Lugo (who asserts that the opposite is commonly condemned), Tournely, Anacletus, Salm, etc., against Scotus and Gavantus; because a subject, with regard to the power of his order, which he uses at that time, is not subject to the prelate (2). 80. — The application must be made before the celebration, or at least before the consecration. But the question arises: 1. Is a habitual application sufficient, namely, one that has been made once and not subsequently revoked? Vasquez, Abelly, and Isambard deny this, saying that just as an actual or at least virtual intention is required for the confection of the sacrament, so too is an intention required for the application of the fruit of

the sacrifice. But the common and true opinion, with Suarez, Bonaventure, Lugo, Tournely, Mazzola, Sporer, Busembach, etc. (and the same is said by Father Concina in substance), teaches that a habitual application is sufficient, since the application of the sacrifice does not involve any other reason than a verbal donation, which, once made, remains valid, as long as it is not revoked. The objection to the contrary is answered that an actual or virtual intention is required only to the extent that the minister's intention constitutes the sacrament, but in the application of the sacrifice, it is not the intention of the celebrant that constitutes the fruit, since the sacrifice produces its fruit even without his intention; therefore, a habitual application, by which some fruit has been given to someone, is sufficient (3). 81. The question arises: 2. If a priest receives a stipend for ten Masses, does he satisfy the obligation by applying them in a general way to the first ten Masses he celebrated? Sylvaticus and Concina absolutely affirm this. But Bonaventure, Roncaglia, Aversa, Tamburini, Henno, and others make a better distinction, saying thus: If the individual Masses are applied indeterminately to individual persons, it does not seem to satisfy the obligation; because, to satisfy the obligation, it is required to have the intention of applying the fruit to a specific person, so that that person may benefit from the fruit. However, if the priest applies any Mass to all ten, applying to each of them a tenth part of the sacrifice, since it is certain that the fruit of the sacrifice is divisible; therefore, with such an application, each person receives what is due to him, since each, by receiving a tenth part in each Mass, receives the entire fruit that is due to him in ten Masses (4). 82. — The question arises: 3. Is a conditional application valid? The answer is: If the condition is about the past, it is valid; otherwise, if it is about the future, it is not (1). Benedict XIV, *De Sacrificio Missae*, Book 3, Chapter 3, paragraph 2. (2) Book 6, paragraph 334. (3) Paragraph 335. Question 1. (4) Ibid. Question 11.

[*Latin ed. p. 399*]

Regarding the application of the Mass: It is known only to God. However, Castrop and Lugo state that if someone applies the Mass for the benefit of the one who first gives alms, such an application would certainly be illicit due to the prohibition of Clement VIII, promulgated by Paul V, but it would nevertheless be valid. Nevertheless, Croix argues that it would also be invalid, at least because it could often happen that the Mass is celebrated for a cause that does not yet exist, for example, if someone wanted the Mass to be celebrated in order to be freed from infirmity or calumny: then, if the Mass were celebrated beforehand, the devotee would not receive the desired benefit, since the cause does not yet exist, and conversely, the effects of the Mass cannot be suspended. However, if the priest foresees that Masses will be required for the deceased, he can properly anticipate the celebration, as Vasq., Tourn., Avers., etc., correctly state (1). 83. It is useful

here to note some other points regarding the application of the Mass. It should be noted that on All Souls' Day, there is no general obligation to apply the sacrifice for the deceased, as declared by the Sacred Congregation. See n. 88 of Decree IX. And, assuming that the priest can freely apply the Mass, Tourn. reasonably states that he can justly receive alms (2). It should be noted that in a privileged altar, indulgences are not earned by one who does not celebrate a Requiem Mass, if the rite permits, even if a solemnity is celebrated in some church. However, on days when Requiem Masses are prohibited, indulgences are earned by saying a current Mass, as declared in several decrees of the Sacred Congregation (3). It should be noted that the time of the privilege, when it is for a time, begins to run not from the day of publication, but from the day of the concession (4). It should be noted that when the privilege contains the usual clause: "Provided that 5 or 7 Masses are celebrated in the church; if those Masses are omitted, the privilege does not apply for those days," as declared by the Sacred Congregation in a decree approved by Innocent XI. The same Sacred Congregation declared that during the time when priests do not celebrate the prescribed Masses, indulgences are suspended; however, if they are absent due to infirmity, or if religious are required to celebrate elsewhere by order of the prelate, if this happens rarely, they earn indulgences through the Masses that are celebrated (5). 84. Regarding the time, place, altar, vestments, and other things required for the Mass, see what is said about the examination and ordination, appendix 3, from n. 113 to 123. It is useful here to examine a little more fully the point that is barely mentioned there: does a priest commit a serious sin if he celebrates the Mass within a quarter of an hour? I am not unaware that the Reverend Father Joseph Jorio will soon publish a very useful work on this subject, entitled "La mezza strapazzata"; I call it useful, although it is truly horrifying to see the trampling of ceremonies, by which many priests (may it not be a greater part of them) treat Jesus Christ with disrespect in the most holy sacrifice on the altar. In this work, perhaps (as I have heard), it will be affirmed that it is a serious sin to celebrate the Mass within a quarter of an hour; and I do not think that this opinion should be rejected, if we are speaking of common Masses that have the Gloria and Creed, or other extraordinary prayers. But to be certain of the point, I say that a priest can, with a shorter time than a quarter of an hour, celebrate any Mass, even for the dead, or for the B. Virgin, on a Saturday, without excusing himself from a serious sin. And so I argue: the rubrics that concern the ceremonies to be observed during the Mass are all imperative, as pro- (1) Lib. 6. n. 337. v. Dicunt. — (2) N. 358. — (3) N. 359. Quæres I. — (4) Ibid. in fine. — (5) Ibid. Quæres II.

[*Latin ed. p. 400*]

388 TRACT. XV. ON THE SACRAMENT OF THE EUCHARIST. We have observed this (1). And I know not how this can be denied, when in the bull

of St. Pius V, it is commanded that Mass be celebrated according to the rite, manner, and norm prescribed in the missal; and this is enjoined strictly and under the force of holy obedience: these words, undoubtedly, contain a weighty precept, which, when transgressed in a serious matter, induces mortal sin, as was said above in tr. 2, n. 15. With this established, we say that it is impossible to conclude the Mass within a space of less than a quarter of an hour, without committing grave irreverences, and without causing grave scandal to the people. Therefore, the priest who celebrates so hastily sins in two ways: first, through irreverence towards so great a sacrifice, and second, through the scandal he causes to the people.

85. — And speaking first of irreverence, the Council of Trent, session 22, Decree on the Observance of the Celebration of Mass, states among other things: "It is fitting that all diligence should be employed, so that the external appearance of the sacrifice of the Mass may be made as solemn as possible...." From these words, it is clear that there is a divine natural precept that the Mass be celebrated with all diligence in observing the external ceremonies which indicate devotion and piety. Furthermore, the curse pronounced by Jeremiah, chapter 48, against those who negligently perform the work of God, namely, the functions ordained for the worship of God, is to be understood especially in reference to priests who celebrate without due reverence and solemnity; and that such negligence implies such irreverence that it is almost impious, and that this irreverence is scarcely distinguishable from impiety. Therefore, since the ceremonies of the Mass are prescribed (as is certain) so that this great sacrifice may be celebrated with due reverence, how can one be excused from grave guilt who, by celebrating within so short a time, cannot but conspicuously transgress in this irreverence, by mutilating words, disturbing blessings, genuflections, moving and turning indecently, and by mingling words with ceremonies, or anticipating or postponing them contrary to the rubric's prescription? I said without due reverence and solemnity: I say this, although one might find someone so quick in speech and movement that he could perform the Mass within so short a time without transgressing in words and actions; at least, it is not possible that, in such a short time, he can celebrate without transgressing in the solemnity appropriate to such sacred mysteries, which also intrinsically belongs to the reverence due to them.

86. — And speaking of the scandal caused to the people, the same Council of Trent, session 22, chapter 5, on Reforms, states that the ceremonies were instituted so that the faithful may grasp the majesty of the sacrifice, and the sublimity of the mysteries contained therein: "The Church has added ceremonies," (the Council says) "so that the majesty of this sacrifice may be commended, and that the minds of the faithful, through these visible signs of religion, may be aroused to contemplate the sublime things which are hidden in this sacrifice." But if these ceremonies are performed too hastily, as is necessary when they must be done in so short a time, then

not only do they fail to inspire devotion towards the Mass, but indeed they are the cause that the people attend without reverence: and thus, in this respect also, the priest who celebrates with such haste sins gravely, because of the scandal which is not light, since, instead of leading the people to have great reverence for the sacrifice, he rather... (2) Lib. 6. n. 400. v. Hine dicimus.

[*Latin ed. p. 401*]

OF THE SACRIFICE OF THE MASS. 389. This [practice] moves him to hold it in contempt, since he shows such irreverence in the way he treats it. Therefore, the Council of Tours in 1583 decreed that priests should properly perform the ceremonies of the Mass, "lest they rather draw away the people entrusted to them from devotion, than invite them to the veneration of the sacred mysteries" (1).

87. Here, the question arises whether the resolutions of the Holy See regarding rites impose an obligation? Father Merati (2) responds, and distinguishes: when these resolutions are truly decrees, adopted with rigor, so that, as is expressed in them, "whatever must be observed by all, has been commanded to be observed by all, etc.": then they are binding and must be observed as proximate rules; but when Sixtus V, in constitution 74, granted this Holy See the power to declare all doubts that arise concerning rites, then, according to the opinion of some, these declarations are merely directive, not prescriptive; and Escobar says the same thing in La-Croix. A Catalog of Certain Notable Decrees Concerning the Celebration [of the Mass].

88. I. "Priests may only receive manual and daily alms, if they have satisfied the burdens previously imposed upon them, so that they may also be able to undertake new burdens; otherwise, they must abstain altogether." Decree of the Holy See, Council of June 21, 1625, by the authority of Urban VIII. Then, the same Holy See declared that the aforementioned decree was not to be understood absolutely, but that priests can undertake new burdens, provided that they can satisfy all within a reasonable time. And, explaining that reasonable time on the 17th, it declared: "A reasonable time is not to be considered as a space of two or three months, but is to be understood within a month" (3). See what the Doctors say about the brevity of time in Appendix 3, no. 107.

II. "For the celebration of several Masses, stipends, however small, whether collected from one person or from several, are either conferred upon priests and clerics in the future, or, under the solemn invocation of divine judgment, the Holy See commands that as many Masses as are prescribed according to the nature of the assigned alms, must absolutely be celebrated." Decree of the Holy See, Council, issued by order of Urban VIII, and confirmed by Innocent XII in the Bull Nuper (4).

III. "Wishing to remove all detestable gain from the Church, it prohibits

priests who accept a Mass to be celebrated with a certain alms, from entrusting the same Mass to another, retaining a part of the same alms for themselves." Decree of the Holy See, Council, by Urban VIII.

IV. In the decree of the Holy See, approved by Innocent XII, in the Bull Nuper, concerning benefices, it was said: "The [decree of] Urban [VIII] does not have place, but it is sufficient that the rector of the benefice, who can have the Mass celebrated by another, grants to the priest celebrating the alms that are appropriate according to the custom of the city, or province, unless something else is stipulated in the foundation of the benefice" (5). But, when the question was asked by the Holy See, Council, whether it was permissible for a removable chaplain to receive Masses to be celebrated for the ordinary stipend, retaining the remainder for himself, the answer was: "It is permissible, provided that a certain income is established annually for the chaplaincy, and assigned permanently to the chaplain; otherwise, if a certain alms is given to such a chaplain for each Mass celebrated." Thus it was decided on March 15, 1745, and the decree was observed by myself.

V. "It is not to be permitted that pious foundations, or their administrators, from the alms of Masses..."

(1) Lib. 6. n. 400. v. Hoc quoad.

(2) Ad Gav. par. 3. tit. 11. n. 1 ad III.

(3) Lamber. notif. 56

(4) See apud Croix l. 6. p. 2. n. 64.

(5) Croix l. 6. p. 2. n. 63.

[*Latin ed. p. 402*]

390. TRACTATE XV. CONCERNING THE SACRAMENT OF THE EUCHARIST. "Let no one retain any portion whatsoever of the expenses incurred in the celebration of Masses, unless they have no other means of support; and even then, they must not exceed the value of the expenses which are necessarily incurred for the sacrifice of the Mass itself." Decree of the Sacred Congregation, confirmed by Innocent XII (1). VI. "The archpriest is not to be obliged to provide the necessary vessels for those who celebrate in his church by reason of the obligations of his benefice or chaplaincy. However, with regard to Mass offerings, he is to be obliged to provide such vessels, insofar as it allows them to be celebrated in his church; nor is he to be obliged to admit these Mass offerings, unless the necessary vessels are provided by those celebrating." Decree of the Sacred Congregation, July 6, 1726 (2). VII. "When in the foundation of a benefice, or chapel, it is expressly stipulated that the celebrant is not to be obliged to apply the sacrifice, in such a case, the celebrant may receive a new endowment, and a single Mass may suffice to fulfill the obligations of the benefice or chapel, and also to satisfy the giver of the new endowment." Decree of the Sacred Congregation, July 13, 1630 (3). However, when the Sacred Congregation

was consulted on March 18, 1668, as to whether Masses should be applied for the testator, when nothing about the application of Masses was stated in the will, the Sacred Congregation replied that they should be applied for the testator (4). And the same was declared on February 6, 1627, concerning chaplains who celebrate as confreres or monks, when it is said that they cannot receive a stipend. VIII. "It is strictly prohibited for bishops in diocesan synods, or for superiors in general chapters, or otherwise, in any way to reduce any of the burdens of celebrating Masses, or those burdens imposed after the same synod, or those existing from the very foundation; but for all such reductions, or modifications, or commutations, recourse must be had to the Apostolic See, etc. Otherwise, any reductions, modifications, and commutations of this kind, if any such should occur contrary to this form, are declared to be entirely null and void." IX. "On the day of commemoration of all the faithful departed, Masses may be applied by priests for the benefit of the souls of the departed, either for all the faithful departed, or for some only." Decree of the Sacred Congregation, August 4, 1663 (5). X. "In Masses for the dead, which are celebrated in black vestments, the Eucharist is not to be administered as a sacrament, that is, with consecrated hosts, by taking the pyx out of the repository; but it may be administered as a sacrifice, as is the case when Communion is given to the faithful with hosts consecrated within the same Mass." Decree of the Sacred Congregation, Ritual, in Acqui, September 2, 1741. And previously, this decree existed: "Masses for the dead cannot be celebrated, unless in black, or at least violet vestments." June 21, 1676, in Oritana. XI. "It is not licit to celebrate Masses on the holy Sabbath in any churches or chapels, notwithstanding any contrary custom, as the same Sacred Congregation has decreed by its general decree, with the approval of the Pope." Decree of the Sacred Congregation, Ritual, March 11, 1690 (6). Another similar decree is found in Pitton (7), which prohibits celebrating on Fridays of the Lord's Supper; and, which is more relevant, these decrees were expressly confirmed by Clement XI, as is read in Lambertini, and later by Benedict XIV, and Pitton (8), by a decree issued by the same Pope on March 15, 1712, in which it was said: "I declare finally, that with the aforementioned prohibition concerning Fridays..."

[*Latin ed. p. 403*]

OF THE MASS. 391. It is understood that the Holy See does not intend, on days of Thursday and Holy Saturday, to permit the celebration of private Masses, but only the conventual Mass, according to the rite of the Holy Church, and according to the decrees of the Sacred Congregation of Rites. And this decree, as Merati states, was confirmed by Innocent XII and by Clement XI (1). XII. "Having obtained permission from the Apostolic See to erect a wonderful private oratory in his own house, if anyone wishes to build an altar of wood there, he does not need an apostolic dispensation,

provided that the wooden altar, if attached to the wall, is not removable, and does not bear the image of a portable altar." Decree of the Sacred Congregation of Rites, dated December 3, 1661 (2). Merati, explaining this passage, says that it should be understood broadly, since an altar is sufficient if it is attached to the wall so that there is no space between it and the wall, and that it appears that a portable altar is not present; at least, he says, it has been interpreted in this way. XIII. The following other decrees of the Sacred Congregation of Rites are read by LaCroix (3): "The conventual Mass must be celebrated daily in colleges whose clergy are numerous, and whose revenues are not meager." XIV. "Masses offered to fulfill alms given to a certain church are not to be celebrated by outsiders, where it is convenient for the priests of that same church to fulfill those obligations." XV. "Subordinates are not to bring vestments for Mass to the bishop." July 7, 1712. But it should be understood, as Gavotti points out, that they should not place the vestments in the middle of the altar, as bishops do: for if they are placed in the corner, this is permitted by the rubric (p. 2, title 12, n. 3), which says: "If (the priest) is about to remove the vestments near the altar where he celebrated, after the Gospel has been read, he should remove them there." At least, LaCroix says, it is permitted when there is no convenient place to put the vestments elsewhere. XVI. "A portable wooden altar with a stone altar is permitted, notwithstanding the synodal constitution, provided that it has a customary repository for relics." January 19, 1614. XVII. "Only the bishop can have windows in the church, through which a view of the church can be had." January 19, 1614. XVIII. "A larger celebration of Mass is not permitted at the altar, while Matins and the Hours are being said in the choir." September 15, 1664. XIX. "A commemoration of the Most Holy Sacrament can be made, if it is exposed, even in a Mass on a feast day of double rank, which is not of the first or second class." December 2, 1678. XX. "It cannot be prohibited to celebrate Mass in an oratory built in the countryside by a layperson, before the parish Mass is celebrated." Decree of the Sacred Congregation, dated March 31, 1629 (4). XXI. "It cannot be prohibited by law (i.e., by the pastor) that Masses be celebrated before a Mass has been celebrated by the pastor." Decree of the Sacred Congregation, June 27, 1641 (5). But in another decree, it was said: "The Holy See considered the synodical constitutions, which state that on feast days, Mass should not be celebrated in other churches, unless Mass has been celebrated in the parish church, to be observed; but so that Mass is celebrated in the parish church at a suitable hour." May 25, 1652 (6). XXII. "The Sacred Congregation considered that it is not permitted for religious, even in their own churches, to publicly expose the Sacrament of the Most Holy Eucharist, except for a public reason, which has been approved by the ordinary; but for a private reason, it is permitted, provided that the Most

Holy Sacrament is not taken from the tabernacle."

[*Latin ed. p. 404*]

392 TRACTATE XV. ON THE SACRAMENT OF THE EUCHARIST. "It must be taken out; and it must be veiled, so that the sacred host itself cannot be seen." On August 17, 1630 (1). This was also confirmed by Benedict XIV in another decree, in which it was decided: "It is not permitted to expose the Divine Eucharist publicly," unless for a public reason, and with the permission of the bishop (2). Furthermore, I say that if a private individual were to desire the exposition of the Blessed Sacrament to promote public devotion, this may lawfully be done; but not if he desires it only for his own private devotion (3). Moreover, it must be noted that with regard to secular churches, there is a decree of the Sacred Congregation of Bishops and Regular Canons prohibiting the removal of the pyx from the tabernacle, when it is exposed for a private reason: "If, at times, the most holy Eucharist is to be exposed for a private reason, it must never be taken out of the tabernacle, but must be placed in the pyx, veiled, at the open doorway of the same tabernacle, with the assistance of a priest vested in an alb and stole, and with at least six wax candles placed around it. This must be observed also in secular churches. December 9, 1620 (4)." Benedict XIV, in the bull *Cum*, as you well know (in Bullarium, vol. 4, page 417, § 13), speaking of these decrees, states that for a private reason, the pyx must never be taken out, nor even for blessing the people, with these words: "But if the Sacrament is not to be taken from the tabernacle, it is easily understood that in the designated cases (that is, for private reasons), it must not be brought to the door of the church, nor must the blessing be imparted with it." Furthermore, it must be noted in passing what the same Pope adds in the aforementioned bull (§ 12) concerning the administration of the sacraments, namely: "For it should not be permissible for anyone to introduce a new rite by private authority." And to this, he cites Canon XIII of the Council of Trent, in Session 7, where it was forbidden to change the customary rites concerning the administration of the sacraments; and he declares that this applies also to the worship of the most holy Eucharist. Speaking of rites that have already been introduced, he says: "And whenever the introduction of such a rite has occurred, unless it contains nothing contrary to piety, the Apostolic See has not hesitated to forbid it, because of certain external circumstances that were entirely unforeseen, or neglected by him who introduced the rite." XXIII. It should be noted that, according to the decree of Innocent XI, September 1, 1730, it is forbidden "to place statues, relics of the saints, and images of souls in Purgatory on the altar where the most holy Sacrament is exposed" (5). XXIV. Regularly, the Mass corresponds to the Office; but, as it is said in the decree of the Sacred Congregation of Rites: "Even regular priests, on days when they recite their proper Offices according to the double rite, when celebrating in foreign

churches, when a feast is celebrated with solemnity and the attendance of the people, must celebrate Mass, conforming to the rite and vestments of those churches. On other days they may do so; but when votive Masses or Masses for the dead are prohibited, they must at least conform in vestments." June 2, 1701, in Merati, Index of Decrees, no. 558. XXV. It should be noted that the Sacrament of the most holy Eucharist cannot be kept in churches other than parochial churches, without a dispensation from the Holy See, because the ordinary cannot administer it, as Bar- (1) Apostolic Letters, Notitiae, 3rd series, no. 11. — (2) So in Bullarium, vol. 2. — (3) Book 6, no. 424, see reference. — (4) Apostolic Cardinal Lambert, Notitiae, 3rd series, no. 27. — (5) Apostolic Morato, part IV, title XII, § 6, no. VI, see *Altare insuper*, page 670.

[*Latin ed. p. 405*]

OF THE MATTER AND FORM OF PENANCE. 393. Barbosa, Pignatellus, and others, according to Cardinal Petra (1), cite several decisions of the Holy See, both concerning hospitals and oratories, and also churches that are within the boundaries of a parish, or in the countryside, to which the parish priest goes to celebrate Mass; for Petra states that the Holy See only grants permission to reserve the Eucharist in such churches or chapels when there is a gathering of the people there, and especially if those places are distant from the parish. Subsequently, Benedict XIV, in the Constitution *Quamvis justo*, issued on April 30, 1749 (see Bullarium below), expressly declared that the granting of this permission pertains exclusively to the Apostolic See, with these words: "Indeed, the right to grant this grace (that is, to reserve the venerable Sacrament) belongs exclusively to Us and the Apostolic See, as is indicated by the aforementioned decree, and canonical discipline teaches that the most holy Eucharist cannot be reserved in churches that are not parochial without the favor of the Apostolic Indult, or an immemorial custom that suggests the presumption of such an Indult." However, the Holy See stated that a possession of 40 years, even with a presumed title, is sufficient to presume an Apostolic license; but it adds that, if it is established that the holy Eucharist is reserved solely by the license of the ordinary, then neither the container nor the immemorial possession would be of any benefit. These decisions are cited by Petra (26). It should be noted, as stated by Merato (2), Corset, Tonelli, and Bisso, that after the nuns have received Communion, the priest should not bless them with the pyx, but only with his hand, with the pyx placed on the altar cloth, standing still before the altar window, in the same manner in which other faithful are blessed after Communion; for only the sick are blessed with the Sacrament, those who receive it as Viaticum, as prescribed in the Roman Ritual. Also, it should be noted from the decree given on September 15, 1736, in Merato, no. 696, that it is prescribed: "When Communion is given to nuns who have a window in the Gospel side, the priest should descend and return through

the lower steps of the altar, and not the side steps."

TREATISE XVI. ON THE SACRAMENT OF PENANCE. CHAPTER I. OF THE MATTER AND FORM.

1. Of the remote and proximate matter of Confession. — 2. Whether religious are to confess once a month. — 3. Whether confessed sins are suitable matter. — 4. Whether sins already confessed should be distinguished from those not confessed. — 5. Whether the words "on account of your sins" are necessary. Whether the words "on account of your sins" are necessary. Whether other words are necessary. Whether censures can be absolved by the words "I absolve you." The presence of the penitent is required. — 6. Of absolution under a condition.

1. Penance is taken as a virtue, and as a sacrament; as a virtue, it is defined as: "A virtue tending to the destruction of sin, according to the offense against God, through the means of sorrow and satisfaction." As a sacrament: "It is a sacrament consisting of the actions of the penitent, and the absolution of the priest."

(1) Barbosa in Trid. sess. 13. c. 6. de Euchar. Pignatell. Const. 86. v. 16, Petra tom. 3. in Const. I. Urb. VII. pag. 166. ex n. 30. — (2) Merat. part. 2. tit. 10. n. 33. in fin. v. Clausa pyxide pag. 351.

[*Latin ed. p. 406*]

394. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. Penance, as a virtue, has always been necessary for salvation; but as a sacrament, in the new law, it is now a necessary means of grace for those who have fallen into mortal sin after baptism, at least in intention, or desire, if it cannot be actually received. According to St. Thomas (1), and the common opinion, the remote matter of this sacrament are the sins committed after baptism; but mortal sins are the necessary matter; venial sins, when confessed, are sufficient matter; for these are sufficient to receive absolution, but no one is obliged to confess them. The proximate matter, according to the same St. Thomas (2), are the acts of the penitent, now called by the Council of Trent the "matter," because they are not a physical matter, as is the case with the other sacraments; these acts are (as the Council declared) contrition, confession, and satisfaction. However, satisfaction is not an essential part, as are the first two, but rather an integral one; for in some cases, the sacrament can be valid without it. This is contrary to Scotus, who believes that the entire essence consists only in absolution.

2. Speaking of the remote matter, it was said that venial sins and mortal sins, when confessed, are only sufficient matter. But it is questioned whether religious and monks are obliged to confess at least once a month, even if they are not burdened with mortal sins? A doubt arises from Clementine, "Ne in agro," § "Sane, de statu monach.," where (when speaking of Benedictine monks), it is said: "Indeed, every month, both in

monasteries and outside (without any excuse), all and each monk should attend confession at least once. And on the first Sunday of each month, all should receive Communion in the monasteries." Given these premises, other doctors, Azor, Vasquez, Hurtado, etc. (3), say that this is a binding precept under a grave penalty, and therefore they say that religious are bound to confess every month, even if they are not subject to mortal sins. But it is more commonly held by Soto, Can. Cajetan, Navar, Molfes, and Megal (4) that the aforementioned Clementine does not impose a grave precept. Indeed, Father Suarez (5) says that the aforementioned decree does not imply a precept, but only a counsel; and he draws this from the Council of Trent, session 25, chapter 10, on Reforms, where, when speaking of nuns, it is said: "Let the bishops, and other holy superiors of nuns, diligently see to it that they are admonished in their constitutions to be devout, so that at least every month they should make confession of their sins, and receive the Eucharist." From these words, Father Suarez concludes that unless it can be shown that the constitutions of a religious order impose a grave obligation, there is no rigorous obligation on this matter. And the same is held by Castrop, Can. Praepos., Vivald, Leand, etc., apud Salm. (6). And what the aforementioned authors say about confession, they also say about Communion.

3. It is questioned whether sins that have already been confessed are suitable matter for receiving absolution? A doubt arises from the fact that a sin that has been forgiven is no longer capable of forgiveness; therefore, it does not seem to be suitable matter for confession. But it is the common opinion, and the practice of the faithful, which is held with St. Thomas (7), Suarez, Castrop, Salm, etc., and it is certain from the Extravagant 1, de Privil., § "Verum," at the end, where it is said: "That the confession of their sins may be repeated." We believe it is salutary. And it does not contradict to say that a sin forgiven is no longer a sin, because although a sin, once forgiven, is no longer a sin, (1) 3. p. 84. a. 1 ad. 1. et 2. — (2) Ibid. a. 2. — (3) Apud Dianam. p. 8. tract. 1. resp. 16. — (4) Ibid. p. 3. tract. 3. resp. 1. — (5) In 5. p. sess. 2. — (6) Castr. tr. 23. d. unde Poen. p. 20. 2 n. 6. Can. relict. de Poen. e. 5. At vero Salm. eod. iii. tr. 6. e. 7. n. 55. — (7) In 4. d. 17. q. 3. a. 3. q. 5 ad 4.

[*Latin ed. p. 407*]

OF THE MATTER AND FORM OF PENANCE. 395. The sin committed is always the matter; therefore, it can rightly be the matter of the sacrament not once, but repeatedly, just as the water can rightly be the matter of many baptisms (1). 4. It is asked: 3. Whether the sins confessed must necessarily be distinguished from those not confessed in confession? The answer is negative, as Bonaventure, the Council of Lucca, and Sancy hold that this is not necessary unless there is a proximate occasion that must be removed, or a reserved case, or another circumstance (2). 5. The words of the priest,

"I absolve you from your sins," are the form of the sacrament of penance. Some ancient authors believed the form to have been a prayer, as it is now in the Greek rite (as Martene and Tournhem testify); but the Latins, including Baronius, Gonet, and others, deny this (3). However, it is asked: 1. Whether the words "I absolve you" are essential? Lugo and Wigandt deny this, arguing that the words "I absolve you" can be sufficiently expressed by other words contained in the form, namely, "from your sins." However, Bonaventure, the Council of Castrillon, and Holzmüller commonly affirm this. And since this opinion is also probable, it must be followed in practice, since Innocent XI condemned the proposition that it was permissible to use a probable opinion in administering the sacrament. It is asked: 2. Whether the words "from your sins" are necessary? Milante, the Council of Lucca, Holzmüller, etc., deny this; for (they say) other words can sufficiently determine the sins of the penitent from the circumstances. And in the Roman Catechism (p. 2, n. 19), other words are not considered essential to the form, except for "I absolve you." However, many other doctors, such as Paludanus, Major, Croix, Mazzotti, etc., believe them to be necessary, because if the reasoning of the opponents were valid, they would also say that the words "I absolve you" could be omitted. And since this opinion is also probable, it must be followed, as Holzmüller, Roncaglia, etc., also maintain, and all agree that it is grave if they are omitted (4). It is a common opinion against Durandus (a doctor otherwise learned, but extravagant in his opinions) that the words "in the name of the Father, etc." are not essential; and commonly, Bonaventure, Castrillon, Salm, Croix, etc., say that omitting them does not exceed a venial sin (5). The other words: "Have mercy, etc." "Grant indulgence, etc." It is commonly held that they can be omitted without sin. And the same doctors say of the words: "Our Lord Jesus Christ, etc." that, as the Council of Trent, Session 14, Canon 3, says, only that, except for the form, other prayers are laudably added. However, Father Concina argues that omitting these words is venial, and not without reason, since the Roman Ritual (de Form. absol.) says: "In frequent confessions, it is permissible to omit 'Have mercy, etc.' and it will be sufficient to say: 'Our Lord Jesus Christ' up to the words: 'His passion, etc.'" However, in the case of a grave necessity, such as at the point of death, one can briefly say: "I absolve you from all censures and from your sins. In the name of the Father, etc." (6). It is commonly held that the priest, through the words "I absolve you," can absolve both from sins and from censures. Nevertheless, the Council of Sens, Salm, etc., rightly say that doing this without a cause is venial, because it is contrary to the custom of the Church; unless, as Holzmüller and Viva, etc., probably say, there was no suspicion that the penitent had incurred any censure (7). It is certain that the form must be pronounced in the presence of the penitent; and Clement VIII, in 1602, on June 20, condemned the proposition that: "(1) Lib. 6, n. 427. Dubit. 2. — (2) N. 435, ad 2. — (3) N. 430. — (4) N. 430,

Dubit. 2. — (5) Ibid, Dubit. 3. — (6) Ibid, v. Verba. — (7) Ibid, Dubit. 4.

[*Latin ed. p. 408*]

396. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. "Through letters, or by a messenger to the absent confessor, to confess sacramentally," and to obtain absolution in his absence. And as the Pontiff rightly declares, following Salm, he also declared it invalid; because the Pope could not prohibit it in cases of necessity. And Paul V, on July 14, 1604, forbade this, although confession made in person had preceded it (1). Such presence is sufficient for it to be moral, namely, within that distance in which people usually speak to each other, even if at a height. Sporer and others extend this distance to 20 paces; however, they state that if the penitent has left the confessional, the confessor should call him back to administer absolution, if it can be done conveniently. Furthermore, Sporer, with Bonac and Gobat, states that the confessor can, without scruple, administer absolution to a penitent who is certainly close by. Tamb reasonably holds that if absolution were given to someone who is falling from a roof, it should be given under the condition that there is doubt as to whether moral presence exists at such a distance. However, the doctors generally do not consider whether the penitent hears the absolution. Indeed, Croix prudently advises that absolution be pronounced in a low voice, so that if someone is dismissed without absolution, others may not notice (2). 6. It is asked here, finally, when is an absolution given under a condition valid and licit? If the condition is about the future, it is generally considered invalid. However, P. Viva admits that absolution can be conferred in this way: "I absolve you, if God knows that you will restore what you owe"; but this is rightly denied by Coninc, Dic. Conv. Tourn., etc., because, since God has entrusted the administration of the sacraments to human hands, conditions cannot be attached that are unknown to humans (3). On the contrary, if the condition is about the past, or the present, all agree that it is valid, and also licit, when there is a just cause, according to the common opinion (contrary to a few), as stated in treatise 14, no. 3. The just causes are: 1. if the confessor prudently doubts the absolution given: Suar., Lugo, Ronc., Bonac., Salm., Croix, etc.; 2. if there is doubt about the penitent's disposition, and yet there is a need to absolve him, as will be said below, in the last treatise, speaking of children and the dying. However, the confessor must usually be certain of the penitent's disposition in order to licitly absolve him; therefore, recidivists, not only in mortal sins, but also in venial sins, cannot be absolved unless they give certain signs of their disposition, as will be said in point II of the aforementioned last treatise. 3. As Bonac says, pious persons can rightly be absolved under a condition who confess only imperfections, concerning which there is doubt as to whether, due to a lack of awareness, they reach the level of venial sins; and this does not seem improbable, since there appears to be a just reason for absolving them in this way, so that such souls do not lack

the fruit of this sacrament for a long time. I say for a long time, because I would not allow this except once a month. Furthermore, Sporer says that the confessor can administer absolution if he doubts his jurisdiction; but I think this should not be allowed, unless the penitent is in mortal danger, and would otherwise have to be deprived of absolution for a long time. This must be understood only in the case of doubt of fact; because if the jurisdiction is positively doubtful, that is, if it is probable due to the authority of doctors, then absolution can certainly be given absolutely: for then the Church always and a grave cause is present, as we said above, treatise 1, no. 27. (1) Lib. 6, no. 428. (2) No. 429. (3) No. 431 and also no. 26.

[*Latin ed. p. 409*]

ON CONTRITION. 397 Furthermore, [St.] Spor and Mazz. state that absolution can be granted under the condition that the penitent is in necessity of receiving Holy Communion, and is dubiously disposed. However, a distinction must be made in this matter, as we stated in treatise 15, no. 34, and it must be determined whether the doubt pertains to the action of the sin, or to the confession of a sin already committed. For if the penitent is certain that he has committed a grave sin, and his disposition is doubtful, he cannot receive Holy Communion, even if he has been absolved under the condition; and if he cannot receive Holy Communion, he cannot even be absolved; for then the cause of necessity for receiving Holy Communion is lacking, in order that he might be absolved under the condition (1). See no. 34, treatise 15. CHAPTER II. ON CONTRITION AND PURPOSE. 7. — AS we have seen above, and as the Council of Trent declared in session 14, canon 3, there are three parts to the sacrament of penance: contrition, confession, and satisfaction. Each of these will be discussed separately in distinct points. And first, of contrition. POINT I. ON CONTRITION AND PURPOSE. 8. What contrition consists of. — 9. From what motive it is produced. — 10. When are we bound to contrition. — 11. Whether in articulo mortis, etc. — 12. Whether general sorrow is sufficient. — 13. Whether acts of faith, hope, etc. are sufficient. — 14, 15 and 16. Whether attrition without predominant love is sufficient. — 17. Whether attrition from fear of temporal punishments is sufficient. — 18. Whether a valid and fruitful sacrament is given. — 19. Whether sorrow must precede confession. — 20. How long must the sorrow last. — 21. Whether sorrow must lead to confession. — 22. Whether those who reconcile themselves quickly must elicit new sorrow. — 23. Concerning sorrow for venial sins. 8. — Regarding contrition, the Council of Trent, in session 14, canon 4, distinguishes between perfect contrition, which arises from the motive of charity, and imperfect contrition, which is called attrition, and which is conceived either from consideration of the turpitude of sin, or from fear of hell, excluding the will to sin, and including the hope of forgiveness. Let us now speak of perfect contrition, how it ought to be, and when it is necessary; then we will speak of attrition. Contrition is

defined by the Council: "Sorrow and detestation of sin committed, together with the purpose of not sinning hereafter." Hence, the question arises: does contrition consist in sorrow, or truly in detestation of sins? Some, such as Gonet, maintain that it consists in sorrow, which presupposes detestation. Others maintain that it consists in detestation, which follows sorrow: and this second opinion is truer, and is in agreement with Suarez, Navar, Cajetan, Holzmüller, Sporer, and others, as well as with St. Thomas (2), who says: "It is required for remission that a man detest his sin." The reason is that sorrow is not the cause of detestation, but detestation is the cause of sorrow. Furthermore, as Frassen, Vega, Coninch, Holzmüller, Sporer, and Croix rightly say, there is no doubt that one is explicitly contained in the other: for he who detests sin necessarily grieves about it; and he who grieves about it necessarily detests it (3). 9. — The question arises: from what motive is perfect contrition produced? Some say from the offense given to any of the divine attributes, such as mercy, justice, etc., and Lugo and Suarez rightly state that this opinion is quite probable, since he who loves divine mercy, or justice, (1) Book 6, no. 452. — (2) 5th part, p. 87, question 1. — (3) Book 6, no. 455.

[*Latin ed. p. 410*]

398. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. With respect to God, he already loves God Himself, since divine mercy and justice are God Himself; and conversely, he who repents of the offense done to divine mercy with respect to God, already repents of his sin, not out of a motive of love for himself, but for God. However, the more common opinion holds that contrition must proceed from the offense done to divine goodness, because, as the Council of Trent teaches, contrition arises from charity, and, according to the more common opinion, charity has as its object God's goodness, insofar as it encompasses all divine perfections, as we said above, Tractate 4, paragraph 9 (1).

10. — *Question:* When does the precept of contrition obligate? It is certain that it obligates: 1. In the danger of death. 2. When a person is bound to elicit an act of love, which, as we said above, Tractate 4, paragraph 13, everyone is bound to elicit once a month. 3. It is permissible that, outside of the danger of death, there is no special precept of contrition; nevertheless, setting aside the annual obligation of confession, we say that one sins gravely against charity towards oneself who perseveres in sin for a long time, as St. Thomas says, because, "Without justifying grace, it cannot be that one remains for a long time without committing a mortal sin" (3). As for how long this time is, Concina and Roncaglia believe it to be about a week; others, however, more commonly, such as Castrén, Laym, Lugo, Salm, Hen, Elb, etc., say it is a space of a year; the first opinion seems too strict to me; but I cannot agree with the second, at least because of the obligation that exists (as we said) to elicit an act of charity once a month;

however, it is true that the unlearned find it difficult to recognize this obligation (4). Some, however, want there to be an obligation of contrition for sinners on every feast day, in order to fulfill the purpose of sanctifying the feasts; but this is commonly denied, because (as was said with St. Thomas, and as can be seen above, Tractate 2, paragraph 28) the end of a precept does not fall under the precept.

41. — *Question:* In articulo mortis, is he who confesses with only attrition also bound to elicit contrition? The first opinion, with Suarez, Bonaventure, etc., affirms. But the second opinion, which is much more common, with Lugo, Salm, Castrop, Roncaglia, Holzmüller, Salm, Becan, Sporer, etc., denies, and Suarez calls it very probable, because, given that it is certain (as we will show in paragraph 14) that attrition alone is sufficient for confession, he who has confessed with it is already morally certain of divine grace. This second opinion is very probable; but it cannot be denied that the first should be urged upon the dying, all the more so because at the very end of life we are bound to an act of love, which cannot be satisfied unless we detest sin, as it commonly occurs to the doctors (5).

12. — *Question:* Is general sorrow for sins committed sufficient to obtain justification? In this matter, whatever some may say who wrongly require the act of particular sorrow for each sin in particular, or at least (as others say) the actual memory of each sin, it is certain that sorrow for all sins by which one offends God is sufficient; thus say Scotus, Suarez, Juvenius, Concina, Laym, Cajetan, Holzmüller, Sporer (1).

(1) *Lib.* 6, n. 436.

(2) *2-2, q. 14, a. 2.*

(3) *1-2, q. 109, a. 8.*

(4) *Lib.* 6, n. 437, Doubt 1.

(5) *Ibid.* Doubt 2.

[*Latin ed. p. 411*]

OF PENITENCE. 399. Croix, and many others: indeed, Cajetan calls the opposite opinion ridiculous, and St. Thomas expressly teaches our view (1), saying: "For justification, it is not required that one consider each individual sin, but it suffices that one consider that, through one's fault, one is turned away from God." However, the consideration of individual sins must either precede, or at least follow, justification, namely (as Suarez and others explain) in order to confession, which follows the act of sorrow. The Roman Catechism (section 3) teaches the same, saying that God spares the sinner "as soon as he has gathered himself together and detested all his sins," which, at another time, if there is ability, he should recall individually and detest in his heart (namely, so that he may confess), and turn to the Lord. And the reason is clear: first, because it is clear from Scripture that the sinner receives forgiveness immediately as he turns to

God: "Thou therefore, O son of He man, say to the children of thy people." Ezekiel 33:12. Therefore, if in the detestation of the first sin, all sins were not forgiven, he would receive forgiveness only for that one, and the others would not be forgiven; but this is impossible, because in mortal sins, one sin cannot be forgiven without another. Secondly, because (and this is the intrinsic reason) he who is sorry for his sins for the general reason that they are an offense to God, necessarily grieves over each sin that he has in his soul, as the same St. Thomas teaches (2), who says that just as he who loves a community loves each member of it; so too, he who is sorry for all his sins is also sorry for each individual one (3). Thus far concerning contrition; now, concerning attrition, which is necessary to obtain sacramental absolution. But first, let us consider the acts of Faith, etc. 13.—Question 6: Are explicit acts of Faith and Hope required to obtain grace in confession? Some affirm: but others more commonly deny; however, Lugo and Escob rightly say that the penitent always has an act of sorrow, and also has explicit (not merely reflective, but exercised) acts of Faith and Hope, because at that time, without doubt, he exercises faith, and hopes that through the sacrament of penance, in virtue of the merits of Christ, his sins will be forgiven (4). 14.—Question 7: Is attrition sufficient to receive the sacrament of penance, and is an initial love required for it? Theologians agree in affirming both; but the question is whether this initial love should be a predominant charity, by which God is loved above all things? This is the view of Merbes, Molin, Habert, Juvenal, Conc. Antoine, and others, who say that such love is called initial, or begun, to the extent that it is remitted; for, as they say, when sorrow arises from intense love, then there is perfect contrition, which remits sins even outside of confession. But the common opinion, which we follow, holds that attrition is sufficient without a predominant charity, which arises from fear of hell, or loss of glory, or from horror at the wickedness of sin, known through the light of faith; this is the view of Gonet, Camus, Petrocor, Tourn, Cabass, Wig, Abelly, Nav, Suar, Tol, Lug, Laym, Salm, and many others, along with Benedict XIV (5), who asserts that after the Council of Trent, all schools adopted this opinion with approval; therefore, it is rightly said (1) De veritate, q. 28, art. 5, ad 4. (2) In 4. dist. 17, q. 2, art. 5, q. 3, ad 2. (3) Lib. 6, n. 458. (4) N. 439. (5) De Synod. 1, 7, c. 13, ex n. 6.

[*Latin ed. p. 412*]

400 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. Suarez, Lessius, Castrén, Filliu, Card. Rainaud, Lugat, Prado, Tanti, Vives, and Croÿ, all hold the opinion that, after the Council, it is morally certain, and that the opposing view is no longer likely. And it is evident from the decree of Alexander VII, dated May 5, 1667, that the schools (at least, commonly, as they hold it to be morally certain), as it prohibits under pain of excommunication: "that anyone should dare to label with censure, or

injury, or insult, either opinion, whether it denies the necessity of some love of God in attrition conceived out of fear of hell, which is commonly held among the scholastics today; or whether it affirms the necessity of such love." Therefore, the Pope, by attesting that the opinion denying such love is more common among the scholastics, consequently testifies that it is commonly held as certain in the schools, since everyone knows that doctors cannot embrace opinions regarding the value of the sacraments that are not morally certain. Nor did the aforementioned decree prohibit the opposing opinion from being called improbable; for improbability is not a mark of censure or insult, as prohibited by the decree. All the more so, since (as we shall say below), we do not deny that the beginning of love is required in attrition, but we say only that charity is not required to predominate. But let us proceed to the proofs. 15. Our opinion is proven 1. from Trident, Session 14, chapter 4, where, speaking of attrition conceived out of fear of hell, etc., it says: "And although attrition by itself cannot lead the sinner to justification through the Sacrament of Penance, nevertheless it prepares him to receive the grace of God in the Sacrament of Penance." The adversaries object that the Council did not say "suffices," but "prepares"; therefore, they say, attrition without charity prepares, but does not suffice; all the more so, because Card. Pallavicino, referring to the Council, after a serious disagreement among theologians, removed the word "suffices," which had already been written, and in its place inserted the word "prepares." But Gonet responds correctly that the Council used the word "prepares" insofar as it necessarily meant the same thing as "suffices," because attrition conceived out of fear of hell, even though it is a gift of God, as the Council declared, always prepares remotely for grace, even outside the Sacrament; therefore, in the Sacrament, it prepares proximately for it. This is clearly evident from the very words: "And although, etc.:" If the Council had intended to speak only of remote preparation, without it being followed by grace, it would have said incoherently and wrongly: "And although attrition outside the Sacrament of Penance cannot produce grace, nevertheless in the Sacrament it prepares to obtain it"; but it should have said: "And although attrition outside the Sacrament does not prepare for grace, it nevertheless prepares to obtain it in the Sacrament." Since, therefore, it said: "Although without the Sacrament attrition cannot lead the sinner to justification, nevertheless in the Sacrament it prepares him to obtain grace," it necessarily meant proximate preparation. This is confirmed more clearly by the words that follow: "Wherefore, certain Catholics are falsely accused by some, as if they had taught that the Sacrament of Penance confers grace without a good disposition on the part of those who receive it." The heretics, along with Luther, never accused Catholics of saying that grace is given to the contrite, but only to those who say that it is given to the attrite, because these latter are devoid of good works, and have a sufficient disposition to

obtain grace in the Sacrament: "Trisagion" (said Luther), "because of the wickedness of sinners, the loss of blessedness."

[*Latin ed. p. 413*]

ON CONTRITION. 401 "Those who, etc., make a show of contrition, are merely hypocrites, and such are unworthy of absolution; therefore, those who claim that this kind of contrition is closely related to contrition are to be condemned." Thus, these are those whom the Council calls falsely seduced by heretics. 16. This is proven by reason, because the sacraments actually work what they signify; therefore, it must be verified (in itself) that when the priest gives absolution, at that very moment sins are remitted; therefore, penance is called the sacrament of the dead, because it confers the life of grace upon him who is deprived of it. If, therefore, true charity were necessarily required in sorrow, the sacrament would never confer grace, because all would already be justified; for every sorrow that proceeds from predominant charity is true contrition, as taught by St. Thomas (1), and this happens (as the Saint explains) whenever it displeases a man more to lose the grace of God than the good of another; and when that is true contrition, however small the sorrow, it removes sins: "However small the sorrow may be (the words of the Angelic Doctor), provided it suffices for the purpose of contrition, it removes all guilt." And here, the Saint certainly speaks of sorrow outside of the sacrament, as he expresses elsewhere (2): "Sin is forgiven through contrition alone... But if, before being absolved, he has this sacrament in mind, then the power of the keys already works in him." What could be clearer? But that any contrition that arises from predominant charity removes sins is read in the same Council, session 14, chapter 4, in these words: "And if this contrition should sometimes happen to be perfect in charity, and reconcile the man with God, before this sacrament is actually received, etc." Here, the Council certainly does not speak of perfect charity in terms of intention, but of perfect charity in terms of the motivating force of predominant charity; for the Council here distinguishes it from imperfect contrition, which does not originate from charity, by immediately adding: "But this imperfect contrition, which is called attrition, is conceived either from the consideration of the shame of sin, or from the fear of hell and punishments." And the reason is clear, because any contrition is a formal act of charity, and charity cannot be joined with sin, as is proven from six hundred Scriptures: "I love them that love me." Proverbs 8:17. "He that hath my commandments and keepeth them." John 14:21. "Every one who loves is born of God." 1 John 4:7. And this is commonly taught by the most holy Fathers, and by theologians with St. Thomas (3), who says: "Charity cannot be with mortal sin," and for charity, the holy Doctor certainly does not mean here intense, but predominant, as elsewhere (4) he declares that charity consists in loving God above all things, saying: "The act of mortal sin is contrary to the charity which con-

sists in loving God above all things." This is more certain from proposition 32 of Baius, condemned by Gregory XIII, which said: "That charity, which is the fullness of the law, is not always joined with the remission of sins." And so I ask: What is that love, which is the fullness of the law, namely, which is sufficient to fulfill the precept of charity? Certainly, it is that love in which God is loved above all things, as all agree with St. Thomas (5), who, explaining that precept: "You shall love the Lord your God with all your heart," says: "(1) Suppl. q. 5. a. 3. — (2) Quodlib. 4. a. 10. — (3) 2. 2. q. 45. art. 4. — (4) 2. 2. q. 24. art. 13. — 2. 2. q. 44. art. 8 ad 2. 26

[*Latin ed. p. 414*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE. "For God must be loved above all things." Therefore, since it is certain that perfect charity, even if imperfect, cannot be united with sin, it is also certain that any contrition which is formally an act of charity, removes sins. Therefore, assuming this, if the love begun, and required in contrition, is to be perfect charity, this is not rightly asserted, because (as we have shown) if this were the case, every sinner should already be justified and able to receive sacramental absolution, and thus it would never happen that the sacrament would cause actual justification, which is its proper effect. However, if in contrition, for the purpose of obtaining grace, a beginning of perfect love is desired, as the Council of Trent states in Session 6, chapter 6, when speaking of the disposition of those who begin to love God as the source of justice in order to obtain justification; this is not denied, and we say that this beginning is already found in every contrition, whether it be through the fear of the punishments inflicted by God, as it is written in Ecclesiasticus 25:16: "The fear of God is the beginning of his love," or through the hope of remission and blessedness, as St. Thomas says (1): "From the good that we hope to obtain through something, we begin to love that thing." But it is not necessary that a true act of perfect charity be desired in order to obtain grace in the sacrament. Indeed, it is true that, according to Pallavicino (2), referring to those words "they begin to love," some Fathers of the Council argued that the words should be added, "through an act of charity"; but the Council opposed this, and the words were not added. A certain modern author in a book entitled *Expositione sulla dottrina christiana*, speaking of the sacrament of penance, puts forward another unheard-of opinion, and says that if a sinner who has imperfect perfect charity is about to die before receiving the sacrament, God will not allow him to be condemned, because (as he says) it seems horrible that God should eternally condemn one who loves Him above all things. Therefore, he believes that in such a case, God will save him through some extraordinary providence. If this author had said that God would increase the disposition of such a sinner who is about to die before death, this opinion would seem less incongruous. But who will ever believe that that sinner, having the same disposition, is

now pleasing to God, and now displeasing to Him? How can the same love towards God now make him worthy of divine love, and now make him worthy of hatred? Finally, on what does this author base this extraordinary providence of God? On what Scripture, on what Church canon, on what teaching of the Fathers? He asserts this gratuitously. Rather, it seems that it should be concluded that if it is considered hard and horrible to think that God would condemn one who loves Him above all things, it should also be considered horrible to say that God hates one who loves Him above all things. See in the work (3), where the doctrines presented here, more strictly understood, are more fully explained along with others. But let us proceed to the doubts.

17. — It is asked: 8. Is it sufficient for contrition to be conceived through the fear of temporal punishments, insofar as they are inflicted by God? Some deny this, saying that sorrow must arise from the fear of eternal punishments, because since the punishment of mortal sin is eternal, the one who is contrite must feel sorrow for his sins through the fear of eternal evil; thus Canus, the Council of Paschal, etc. But others con-

(1) 1-2, question 40, article 7.

(2) Pallav. Hist. Trident. book 8, chapter 15.

(3) Book 6, example no. 440.

[*Latin ed. p. 415*]

ON CONTRITION. 403. It is the opinion of Lugo, Suar., Anaclet., Viva, Elbel, Gobat, Croix, and others, that the words of the Council of Trent, session 14, chapter 4, which state: "Attrition is conceived from the fear of hell and punishment," more probably indicate that. The Council, therefore, distinguishes between other punishments and those of hell, in which all other punishments are certainly included. But since the first opinion cannot be considered improbable, we cannot, in practice, adopt the second (1). 18. — Question 9: Can a sacrament be valid and imperfect? It could happen that someone, having two sins, one of sacrilege and the other of theft, and remembering only the sacrilege, repents only of that, because of the supernatural wickedness of that vice. The question is whether this person would validly receive the sacrament, so that afterward, detesting the theft, he would receive grace and then be obligated to confess the theft? Many deny this, especially the Scotists; but they themselves disagree among themselves. Some say that such a sacrament is not only valid but also perfect, namely, through the infusion of grace, because the penitent, feeling sorrow for the offense against God because of the sacrilege, and desiring to be reconciled with God, this sorrow and this desire cause him to virtually detest the theft as well. But a clear answer is offered to this reasoning: for this person repents of the offense against God because of the sacrilege, and desires to be reconciled with God, only to the extent that he is moved by the wickedness of the sacrilege; but this does not include

the wickedness of theft, so that it could happen that the penitent, if he remembered only the theft, the wickedness of the theft might not move him to repentance; therefore, how can the motive of the wickedness of sacrilege virtually include the detestation of theft? Others say that the sacrament is not only imperfect, namely, without grace, but also invalid, saying that such sorrow cannot be the proper matter of penance, which cannot cause grace. But even to this there is an answer, that since the essential parts are present, namely, sorrow, confession, and absolution, the sacrament cannot be considered invalid; therefore, we readily adhere to the affirmative and most common opinion of the Thomists, with Suar., Lugo, and St. Thomas (2), and we say that such a confession is always valid, but devoid of grace (3). 19. — Question 10: Must sorrow precede confession? Laym., Castrop., Coninch., and others affirm this; first, because sorrow must be sensible, and this cannot be the case unless through confession; second, because confession, in order to be proper matter, must be sorrowful, otherwise it would be a simple narration of sins. Others, however, more commonly deny this, as do Lugo, Suar., Bonac., Holzm., etc., and the Ritual itself strongly favors this view, saying: "After hearing the confession, (the confessor) will lead to sorrow." And they rightly answer the first reason, saying that sorrow is not made sensible only through confession, but also through other signs and words. But they offer no convincing answer to the second reason, so that for this reason I believe the first opinion to be probable, and therefore to be followed in practice. They commonly agree that Conc. Viv., Salm., Holzm., etc., it is sufficient if the penitent, after experiencing sorrow, says: "I accuse myself again of all confessed sins" (4). 20. — Question 11: How long must sorrow persevere morally? Some say longer, and that it is sufficient if it is not retracted; but this is rejected. Others say for a day, indeed, Croix says that in practice it should always be renewed, since the penitent is notably distracted to other things. I, with Ronc., do not doubt (1) Lib. 6. n. 443. — (2) In 4. dist. 17. quæst. 5. art. 4. q. r. — (3) Lib. 6. n. 444. — (4) N. 445.

[*Latin ed. p. 416*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE. It is asserted that, whenever confession stems from the pain of sins, one should always, in a virtual sense, persevere in that pain for at least one or two days, as long as that confession is the effect of that pain. However, if someone confesses out of mere devotion, or to fulfill a vow, or to perform penance (1).

21. It is questioned: Does an act of pain need to be elicited in order to confess? Bonaventure, Busem, and the Council affirm this, arguing that both the minister and the recipient should prepare the matter for the sacrament, just as ablution is prepared for baptism, the laying on of hands for ordination, and so too, pain for penance; therefore, they maintain that if someone elicits an act of pain without intending to confess, that act should

be renewed while confessing. However, others, such as Lugo, Sporer, Moja, and Gobat, more plausibly deny this, arguing that, according to the Council of Trent, attrition is sufficient, and that pain is at least ordered towards absolution, since it is manifested through confession. But because the first opinion is also probable, it should be followed in practice (2).

22. It is questioned: If someone confesses a sin forgotten immediately after absolution, are they obligated to elicit pain again? Lugo, Anacl, Viva, Ronc, and Sporer commonly deny this, stating that the prior contrition, if general, already extends to forgotten sins, and in that case, it undoubtedly perseveres morally, and although there may be multiple sacraments, the same matter can constitute multiple sacraments, just as water can be the matter for many baptisms. However, Vasquez, Bonac, and Filliuc affirm that, through the absolution already imparted, the judgment has already been completed, and the sacrament has been completed; therefore, for a subsequent sacrament, new matter is required; and although pain may persevere, it does not persevere in order towards a subsequent absolution, as stated in the preceding passage; for that pain elicited is only in order towards the first. And because this second opinion is also probable, Croix and Concina rightly say that it should be followed in practice. However, this applies before the reception of the sacrament, because after the sacrament has been received, all the opinions opposed to the three preceding questions become probable; therefore, after the fact, we can rightly embrace them (3).

23. It is questioned: How should pain be elicited for venial sins? Outside of confession, St. Thomas teaches (4): "Some movement of charity is sufficient for their remission." But for the reception of the sacrament of penance, it is certain among all that a formal act of pain is required. However, it is doubted: 1. Does one commit a mortal sin if they confess venial sins without pain? Gonet, Juvenal, and Alexander deny this, arguing that whenever the intention is not to profane the sacrament, a slight irreverence does not exceed a slight offense. However, other doctors commonly and rightly affirm this, and Lugo calls the former opinion entirely false, saying that the gravity of the offense does not consist in the matter, but in the frustration of the sacrament, in not providing suitable and essential matter, such as pain; therefore, whether the frustration is due to a grave matter or a slight matter, the irreverence is always grave (5). It is doubted: 2. Is it sufficient to repent of only one venial sin in confession, without repenting of others? Some deny this, but Suar, Lug, (Conc., Antoine, etc.) commonly and rightly affirm it. The reason is clear, because venial sins are not necessary matter, but sufficient matter. Castrop, Sporer, Lugo, and Tamb argue that it is sufficient to repent of a multitude of venial sins, without repenting of any particular one.

(1) – (5) are references to other works.

[*Latin ed. p. 417*]

OF THE INTENTION. 405. Arriaga and Dicast object, saying that it is necessary, at least, to feel sorrow for some of those [sins], as we have said. But these opinions can easily be reconciled, because it is impossible that he who feels sorrow for the multitude [of sins] does not feel sorrow about the last [sins] that constitute that multitude; and just as, as has been said, it suffices to feel sorrow for one species of venial sin, and not for another, so it suffices for the later [sins] to be regretted, and not for the earlier, so that the penitent then feels sorrow both in a direct way for the multitude and in an indirect way for the last sins (1).

POINT II. OF THE INTENTION. 24. Proposition I. The intention must be firm. Whether he who believes he will fall, etc. — 25. II. It must be universal. — 26. III. It must be efficacious. Whether relapse is always a sign of invalid confessions? And whether the intention must be explicit. 24.

There are three conditions for a true intention required for confession: that it be firm, universal, and efficacious. And first, it must be firm, so that the penitent has a firm mind in every case not to sin. Here arises the doubt, whether the intention of one who does not have the will to sin is valid, but believes with certainty that he will relapse in the future? Sanch., Laym., Nav., Spor., etc., say that it is valid, because the intention of the will can be sound even when the judgment of the intellect foresees a certain relapse, because he has experience of his own frailty. On the contrary, P. Concina rejects even the intention of he who fears that he will probably relapse. This second opinion is too rigid, and not very reasonable, because the fear of relapsing can stand together with the firmest intention. But neither is the first opinion entirely pleasing, at least in practical terms; for, as Croix rightly says, and Busemb. agrees, in practice, he who believes with certainty that he will relapse demonstrates that his intention is not sufficiently firm; because it is not possible that he who knows that God will grant help to him who hopes in Him and asks for it, and will not allow anyone to be tempted beyond his strength, would firmly propose to submit to any evil rather than offend God, and then believe that he will certainly relapse into the same sins; therefore, if he believes this, it is a sign that his intention is not firm (2).

25. — II. The intention must be universal (understand this in reference to mortal sins), as all teach, following St. Thomas (3); nor should those authors be listened to who claim that, just as particular sorrow is valid, so also a particular intention is valid; for it is answered that particular sorrow is admitted because sorrow refers only to the sins committed; but a particular intention cannot be admitted, since everyone must be prepared to avoid all mortal sins that he can commit; therefore, the Council of Trent, speaking of sorrow, says: "Sorrow is detestation of the sin committed";

but speaking of intention, it says, "with the intention of not sinning in the future." This is said of mortal sins, because, with regard to venial sins, it is certain, following St. Thomas (4), that it suffices if he proposes to abstain from one [sin], without proposing to abstain from others (5). Furthermore (as Suar., Croix, etc., say), a man can propose to avoid all deliberate venial sins, and, as far as inadvertent sins are concerned, it suffices to propose to avoid them as far as human frailty allows, as the same Angelic Doctor says in the passage cited (1) Lib. 6, n. 449, Dubit. 2. — (2) N. 451. — (3) P. 3, q. 87, a. 1, ad 1. — (4) Ibid. — (5) Lib. 6, n. 451, v. II, Requir.

[*Latin ed. p. 418*]

406 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. 26. — III. It must be efficacious, that is to say, that the person should propose not only not to commit sins, but also to choose all the means that lead to avoiding them, and especially to remove all proximate occasions. But it must be noted here (whatever Father Concina may say) that a relapse is not always a sign of a weak purpose, so that confessions should not always be repeated as invalid; because a relapse is not a certain sign that the will is lacking, but often it is a sign of a changed will, since it often happens that people firmly propose [to reform], and then fall again; therefore, the Roman ritual states: "It is most useful for those who easily relapse to consult so that they may frequently confess, and, if it is expedient, receive Communion." It does not say that absolution should not be given to those who easily relapse, because of the doubt that exists about their purpose, but rather that they should be encouraged to confess and receive Communion frequently; it is understood and recognized that due disposition must always be present, as we will say later in the final section, point 2.

As for repeating past confessions, Father Segneri rightly says that such an obligation does not exist, unless there is moral certainty of the invalidity of the past confessions, as would be the case if it is observed that someone, after making confessions, always relapses into the same sins immediately after two or three days, without any resistance, and without using any means or removing any occasion. Here, we would speak of those who are in proximate occasion, and of the habitual and recidivists, but we will speak of these particular cases in points 1 and 2 of the final section.

It remains only to see here whether a virtual purpose, included in sorrow, is sufficient for confession. Here, there are three opinions. Opinion 1, along with Scotus, Cano, Cajetan, Toletus, and the Council, denies this, arguing from the Council of Trent, Session 14, chapter 4, where a formal purpose seems to be required, since it is said that a part of the essence of penance is sorrow with the purpose of not sinning in the future. Opinion 2, held by Layman, Navarrus, Cardinal Lugo, etc., affirms that this is the case whenever the sorrow is from a universal motive; and this too is based on the Council, where it is said that attrition, if it excludes the will to sin, al-

ready prepares for grace. This opinion is also held in the Roman Council of Benedict XIII, which approved the instruction to the people, in which (page 440) it is said that, in order to obtain remission, one must propose not to sin again. Opinion 3, along with Suarez, Bellarmine, Bona, and Holzmüller, who call it the common opinion, distinguishes and says that if the penitent does not think about the future, as often happens with those who are near death, then an implicit purpose is sufficient. Otherwise, it must be said of one who does think about the future; because (as the same Council says) contrition contains both the cessation from sinning and the beginning of a new life, according to Ezekiel: "Cast away from you your abominations... and make for yourselves a heart of flesh." Ezekiel 18:31.

However, since the first opinion is quite probable, the one that follows it should be followed before the fact; but after the fact, if someone has confessed with an implicit purpose, he is not obliged to repeat the confessions, as say Bellarmine, Suarez, Vasquez, Bona, and others commonly; since he who has probably received the sacrament validly is not obliged to repeat it there; for then the danger of injury to the sacrament, of frustrating it, ceases.

[*Latin ed. p. 419*]

OF THE CONDITIONS OF CONFESSION. CHAPTER III. OF CONFESSION. POINT I. OF THE CONDITIONS OF CONFESSION. 27.—Confession I. must be verbal. II. It must be secret. —28. III. It must be true. He who lies in confession, etc.—29. IV. It must be complete. Concerning circumstances that aggravate. —30, 31, and 32. Concerning doubtful sins. —33. Concerning sins dubiously confessed. —34. He who has confessed a doubtful sin, knowing it to be certain, etc.—35. When physical impotence excuses the mute, the deaf, those ignorant of the language, and the dying. —36. Concerning the dying person who gave signs through witnesses. —37. Concerning those who give no sign. —38. Concerning those who are corrected in actual sin. —39. When moral impotence excuses. —40. He who must reveal the accomplice, etc.—41. The confessor cannot inquire about the name of the accomplice. 27.—There are four conditions of confession: namely, that it be verbal, secret, true, and complete. And first, it must be verbal, namely, by voice, since this is the common practice of the Church, not already done by signs or in writing; it is stated in the extraordinary indult. Among all, concerning privileges, where it is said: "Unless the article of necessity occurs, the confession of the mouth must be made:" provided that there is no serious reason, e.g., excessive and extraordinary shame, or impediment of speech, and the like, because in such a case it is sufficient, after the confessor has read the confession, for the penitent to say: "I accuse myself of all these sins;" thus commonly Castr., Tano, Conc., Tamb., Salm., etc. (1). But he who cannot confess verbally, is bound at least by signs or in writing, if he can do so without danger and without

great inconvenience, as we will say when speaking of the mute, no. 35 (2). II. It must be secret, because no one is bound to confess publicly, nor through an interpreter, unless he is in danger of death, or if he is in mortal doubt about his contrition, as we will say in the cited number 35. 28.—III. It must be true; therefore, he gravely sins sacrilegiously who lies in a serious matter, denying or concealing, without just cause, some grave sin committed, or not yet confessed; and sometimes the penitent is bound to reveal sins confessed in order to manifest the habit contracted (contrary to what was said in proposition 58 from the decrees of Innocent XI), so that the confessor may be able to administer or postpone absolution. Likewise, he sins who, out of malice, accuses himself of some grave sin which he has not committed; indeed, he commits two sins, one against the virtue of religion, because of the injury done to the sacrament, the other against the virtue of truth, since such a lie is gravely harmful to himself. It is said in a serious matter, because denying in confession some venial sin, or a mortal sin already confessed, or saying another light lie, is the common opinion with Suar., Lugo, Bon., Ronc., Anacl., Holzm., etc., (contrary to Caj. and Armilla) not to be serious. Nor does it contradict what St. Thomas says (3), that he who denies the truth which he ought to confess sins mortally; because the saint speaks there of confession which must be made in the external forum, and not of the sacramental confession, where it is certain that we are not bound to confess neither venial nor grave sins already confessed, unless it would help to receive absolution (4). 29.—IV. Confession must be complete. And here, the material completeness must be distinguished from the formal completeness. Speaking in general, confession must be material—(1) Lib. 6. n. 429 and 493.—(2) N. 479.—(3) 2. 2. q. 69. a. r.—(4) Lib. 6. n. 495 to 497.

[*Latin ed. p. 420*]

408 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. The confession must be made completely and truthfully, for the penitent is bound to explain both the kinds of sins and their number. We have already discussed, in treatise 3, point 3, the distinction between specific and numerical sins, and from what roots these should be derived. However, the question arises whether we are obligated to confess not only the circumstances that change the nature of the sin, but also those that notably aggravate it? There are three probable opinions on this matter. The first opinion, held by Soto, Suariz, Gonet, Sanchez, and the Council of Trent, among others, states that the same obligation that applies to explaining circumstances that change the nature of the sin also applies to those that aggravate it, since both notably affect the confessor's judgment. The second opinion, held by Layman, Sporer, Busembaum, and others, also affirms this, but only with regard to those circumstances that pertain to the essential integrity of the sin, such as the quantity of the theft and the degree of the incestuous act; otherwise,

they argue, the confessor cannot form a correct judgment of the substance of the sin. The third opinion, which is more common and more probable, is held by St. Antoninus, St. Bonaventure, St. Bernard, Soto, Cabass, Lugo, Castrop, Bonacini, Roncaglia, Holzapfel, Salm, and others. They absolutely deny this obligation, and this is the opinion held by St. Thomas (1), who says: "Others say that it is not necessary to confess them, unless the circumstances lead to a different kind of sin, and this is more probable." And in his response to the second question, he adds: "Therefore, it is sufficient if the priest knows the quantity that arises from the nature of the sin." The reason for this is: 1. That the Council of Trent, in session 14, chapter 5, only requires the confession of circumstances that change the nature of the sin, stating that without this knowledge, the confessor cannot correctly judge; therefore, conversely, according to the Council, once these are explained, the confessor can already form a correct judgment. 2. Because the obligation to confess circumstances that aggravate the sin would be an excessive burden for the penitents, since they may themselves doubt whether the omitted circumstances were minor or notably aggravating, and whether they have been sufficiently expressed. 3. Because (and this is the strongest reason, according to Cabass, Lugo, Roncaglia, and Salamanca, with Lambertini (2)) such a law requiring the confession of aggravating circumstances is doubtful, and no one is bound by doubtful laws, as shown in treatise 1, number 33, where St. Thomas (3) says: "No one is bound by a precept, unless through knowledge of that precept." It may be objected that in matters pertaining to the sacraments, we cannot follow only probable opinions, because this concerns the value of the sacrament, whereas here it concerns its integrity. However, as far as the value is concerned, it is certain that the formal integrity is sufficient. Nevertheless, Lugo, Castrop, Salm, and others correctly point out that, as far as theft is concerned, although the penitent is not strictly bound to explain the quantity, the confessor is often bound to investigate it, in order to determine the absolution to be given, both with regard to the quantity and the manner of restitution (4). 30. Furthermore, the question arises whether there is an obligation to confess mortal sins about which there is doubt. But this question must be distinguished; hence, the question arises: 1. Whether positive sins that are doubtful must be confessed, namely, when it is probable that they were committed, and not probable that they were not? In this case, Merbes, Habert, and the Council affirm this, because, as these authors say, in doubtful cases, the safer course is to be chosen. But generally, Sylvester, Sylvius, Gerson, Sanchez, Suariz, Bonacini, Anacleto, Roncaglia, Salm, Holzapfel, and many others deny this, due to the general reason - (1) In 4 distinct. 16, question 3, article 2, question 5. - (2) Notitia 80, number 19. - (3) De Veritate, question 17, article 5. - (4)

See book 6, number 468.

[*Latin ed. p. 421*]

ON THE CONDITIONS OF CONFESSION. 409, that we may lawfully follow opinions that are truly probable, as has been shown above in treatise 1, section 33. And to the opposite rule, the response is given with St. Anthony, as is indicated there in number 36. However, Sanch. Viva, Holzm., etc., rightly point out that in the hour of death, in such a doubt, everyone ought either to elicit contrition, or to receive absolution by confessing at least some other certain matter (1). 31. — It is asked: 2. Whether negative doubts, namely, those of which no reason appears for affirming or denying, should be confessed? Some affirm, with the common opinion of Busemb., Dian., Tambur., etc., saying that the Council of Trent, in session 14, chapter 5, commands the penitents to confess all mortal sins of which they are aware: therefore (they say), certainly doubtful sins should be confessed, which are doubtful in conscience. But others, more probably, Merbes., Habert., Coninch., March., Holzm., Croix, Mazzot., etc., deny this, and call this opinion the Layman and Viva opinion, along with Ledesm., Palud., etc. The first reason is that the Council does not, as the opponents suppose, impose the confession of sins as they are in conscience, but of sins of which the penitents are aware; intending to speak of those of whom the penitents have certain knowledge, since conscience (as St. Bernard explains) signifies the knowledge of the heart; hence it is wrongly said that someone has conscience of that sin of which he has no reason to believe he committed it. All the more so, since in the aforementioned passage of Trent, it is added: "Nothing else is required from the penitents in the Church, than that... each... confess those sins, by which he remembers that he has mortally offended his Lord God;" but he who doubts negatively, cannot be said to remember having committed the sin. The second reason is that (as we said above) a certain obligation should not be imposed by law for a doubtful matter: on the contrary, there is no certain law for confessing doubtful sins (2). And this holds, even if someone were to communicate, as we said in treatise 15, number 34, whatever is said in the work (3). 32. — However, speaking regularly, it is more prudent to advise penitents to confess doubtful sins, for the greater peace of their conscience, provided they are not scrupulous, as we said above in treatise 1, numbers 10 and 11. Furthermore, Salm., Scholastici, Habert, Bonac., Suar., Croix, and others wisely say that for persons of proven piety, who have rarely, or never, given their consent to a mortal sin, these, when they doubt about their consent, especially if they remember having resisted at the beginning, or if they doubt whether they were in perfect sobriety, can certainly conclude that they have not mortally sinned; since (as Salm. and Habert say) it is morally impossible that the will, firmly established in a good purpose, should change, without clearly perceiving it. Father Alvarez says that mortal sin is such

a horrible monster, that when it enters into the soul that has abhorred it for a long time, it cannot enter into it, without the soul clearly knowing it; just as, speaking of those who consent to mortal sins out of habit, they are presumed to have consented, if they have not resisted, because if they had resisted, they would certainly remember the effort made to repel the temptation: hence Croix rightly concludes that in such a matter, a negative doubt is difficult, when the presumption of a good or bad life rightly grounds the belief of dissent, or consent given (4). 33. — It is asked: 3. Whether a penitent is bound to confess a sin that he certainly committed, but is in doubt whether or not he confessed it? If it is doubtful whether he-

(1) Book 6, number 473.

(2) Number 474. Doubt 2.

(3) Number 475.

(4) Number 476. See also.

[*Latin ed. p. 422*]

410 TRACTATE XV. ON THE SACRAMENT OF PENANCE. Regarding the material completeness of confession, it is certain among all that it must be observed. Conversely, if something is positively doubtful, to the extent that one may reasonably believe that it was confessed, there is no obligation to confess it again; and this view is held by Suarez, Navar, Sylv., Bon., Lugo, Salm., Croix, etc. However, as I have found the opinion mentioned above in treatise 1, paragraph 17, at the end, to be quite unconvincing, namely, that there is no obligation to fulfill vows that have probably been fulfilled; so also I cannot approve of the view concerning a sin that has probably been confessed, when the obligation of confession is certain, and the satisfaction is doubtful. However, I do not reject what the aforementioned authors state, namely, that he who has been diligent in confessing his sins, if afterwards he doubts whether he has omitted any sin, after a long time has passed since it occurred, is not obliged to confess it, since he may reasonably believe that in that case he has already confessed it morally with certainty. And Father Concina adds that those who have led a righteous life for a longer time, even if they were accustomed to vices before, if they afterwards doubt whether they have omitted any sin, or any circumstance in general confession, or in particular with due diligence, the confessor should instruct them not to confess further about those things, and never to dwell on them. And speaking of scrupulous individuals (as the doctors commonly say), they are not obliged to confess any sin unless they are certain of it, to the point that they can swear that the sin was mortal, and that they have never confessed it (1). See the statements above in treatise 1, paragraphs 10 and 34. — Question 4: Is one who has confessed a sin as doubtful obliged to confess it again if he realizes that it is certain? Holzm., Spor., Tamb., Elbel, etc., deny this, because the sin (as they say) has already been directly absolved. But the true and most common opinion

of Sanch., Card., Ronc., Busemb., Viva, Diana, etc., affirms that, because although the sin has been directly absolved, it has not been, as it was in conscience, explained when it was committed, and as it is now, according to its known gravity, and according to the precept of confession from the Council of Trent, session 14, chapter 5. They object: therefore, if someone confesses that he has committed approximately ten sins, and afterwards remembers that he was certain that he committed eleven, would he be obliged to repeat the confession? But it is answered that in the "approximately" already included is the number eleven, whereas in a doubtful accusation, the certain is not included; nor can a doubt ever be taken as certain. Furthermore, Coninch., Suarez, Sanch., Salm., etc., say that if someone confesses a sin that the confessor does not recognize as grave, he will not be obliged to repeat it afterwards, if he knows for certain that it is grave in its nature, because in such a case the penitent explains the sin as it is in his conscience (2). 35. Thus far regarding the material completeness; but sometimes the formal completeness is sufficient in confession, namely, that the penitent confesses according to what he can now morally understand, while remaining obligated to make a materially complete confession afterwards, when the impediment is removed, and the precept to confess again is pressing. Therefore, physical and moral impotence excuse one from material completeness. And first, due to physical impotence, the following are excused: 1. The deaf, for whom, both in death and in the Paschal precept, it is sufficient to explain one sin by signs, in the way that they can (3). But whether deaf people who know how to write are obliged to confess their sins in writing; Castrop., Cajet., Navar., Valent., and (1) Book 6, paragraph 477. — (2) Paragraph 478. — (3) Paragraph 479.

[*Latin ed. p. 423*]

ON THE CONDITIONS OF CONFESSION. 411 others, stating that such a method is liable to the danger of manifest revelation. But Lugo, Bonac, Anaclet, Croix, the theologians of Salamanca, etc., commonly and probably affirm, along with St. Thomas (1), that if one is bound by a purpose, one is also bound by the means. It is understood that these means are not notably difficult; therefore, a mute person is not bound to write a confession if doing so would cause extraordinary discomfort or danger, such that his sins would be known by others (2). 2. The deaf, who cannot respond to the confessor's questions, nor do they know how they ought to explain their sins: it is understood that this applies to the completely deaf, because the deaf should be brought to a certain secluded place so that their confessions may be heard. 3. Those who are ignorant of the vernacular language. These people may, in times of precept or other necessity, be absolved by manifesting only with signs the sorrow for their sins; they are not bound to confess through an interpreter, as Suar., Vasq., Lugo, etc., say. However, whether they are bound to confess in this way in death, some affirm; but

others, such as Sot., Cajet., Castrop., Salm., Viva, etc., probably deny, unless they are doubtful about their contrition; because then they are bound to confess with the contrition they have, so that they may receive grace through the sacrament; but then it is sufficient for them to manifest to the confessor, through an interpreter, some venial sins (3). 4. The dying: but many distinctions must be made here. If the dying person is of sound mind, but cannot speak, whenever he gives signs of repentance, or shows that he desires absolution, he can be absolved, and whenever he repeats the signs; because then there is already a confession in that questioning he makes about absolution, or in that sign he gives of his pain, by which he already confesses that he is a sinner; therefore, he then directly receives absolution for all sins under the general notion of sin, although he is bound, if he can, to explain them in particular, so that he may make a materially complete confession (4). 36. — But it is asked: 1. Can a dying person, deprived of his senses, be absolved if those present testify that he asked for confession, or gave signs of repentance? Cano, Ledesm., Alvar., etc., deny this. But the opposite opinion is commonly held, and is to be followed, because then, through the witnesses, the confession is sufficiently made known to the confessor; so teach Bellarm., Sotus, Suar., Lugo, the Council of Salamanca, etc., along with St. Thomas (5), who says: "If an infirm person who asks for unction has lost the use of his senses or speech, let him be anointed by the priest; because in such a case he should also be baptized, and absolved from his sins." And, as St. Antoninus says, quoted in the Roman Pontificale, apud Lugo, even if the infirm person has been in the habit of sin for a long time, and has not confessed. This is proven from the Council of Arausico in canon 26, question 6, and from the Councils of the Third and Fourth of Carthage, and by Pope St. Leo in canon 15, question 6, and finally from the Roman Ritual (on the Sacrament of Penance, § Ordinary Ministration), where it is said: "Even if he shows a desire to confess, either by himself or by others, he should be absolved." And this opinion is valid, as Lugo, Dicast., Croix, etc., probably say, even if only one witness is present, and even if that witness is mediated, who testifies to the signs given by the dying person. Nor does the decree of Clement VIII, which prohibited confession made in the absence of the confessor, stand in the way, since (as Bellarm., Suar., and Peter Lombard testify), the same pontiff declared that he did not intend to include the dying, indeed he expressly said that these are in our case (1) In 4th dist., 17th question, 3rd article, 4th question, 2nd. — (2) Book 6, number 479, verse. Query. — (3) Number 479, verse II. Deaf. — (4) Number 480. — (5) Opus 6, on Holy Unction.

[*Latin ed. p. 424*]

412 FRACT. XVI. ON THE SACRAMENT OF PENANCE. Whether one ought to be absolutely absolved (1). But whether such an absolution ought to be given absolutely; the more common opinion affirms, saying that in

such a necessity, the sacraments ought to be administered absolutely whenever there is a probability of the matter, but under the condition that whenever only a prudent doubt exists: but Suarez, St. Antoninus, Bonaventure, Wigandt, and Croix hold that it ought to be given in our case under the condition: and this opinion seems safe to me, especially when it is doubted (as it can easily be doubted in the uneducated) whether the penitent has truly elicited due sorrow (2). 37. It is questioned: 2. Whether a dying person, deprived of the senses, who gives no signs, nor has given any signs of penance, can be absolved under the condition? Many deny this, such as Lugo, Busembach, Petrocor, Abel, Laym, Roncaglia, etc., because, as they say, the sensible matter of the sacrament is lacking; but more commonly and probably, Merbesius, Molin, Cardinal Pontius, Salmeron, Juvenal, Concina, and Croix affirm, and St. Augustine also clearly teaches this (3), who says: "But baptism, which is the same as reconciliation, is the cause, if perhaps the danger of the end of life preoccupies the penitent; for the Church ought not to allow those to leave this life without the pledge of their peace (4)." It is objected: But in such a case, where is the sensible matter of the sacrament? Gonet and Juvenal answer; but their answers are not very satisfactory, as can be seen in the work. Molfes, Aver, Salm, Viva, and others answer better, that in such a case, a prudent doubt already exists that the dying person, before being deprived of the senses, or in some interval of lucidity, recognizing the danger of his damnation, desires, and even asks for absolution with sensible signs, e.g., with sighs, movements of the eyes or mouth, or at least with labored breathing, which he shows; although such signs may not be clearly perceived, but these or their doubt are already sufficient to give absolution under the condition, because in a case of urgent necessity, it is certainly permissible to use even doubtful matter: which is certainly a certain principle among theologians, as Juvenal testifies. Indeed, we can use even opinions that are only tenuously probable, as commonly taught by Soto, Navar, Cardinal Sanch, Viva, Gobat, Croix, etc., because necessity makes it permissible to administer the sacrament under the condition in any doubt, as long as the injury to the sacrament is already repaired by the condition; and at the same time, the proximate salvation is considered. And here it must also be noted, as commonly by Suarez, Vasquez, Viva, Mazzotti, and others, that priests are bound, when they can, to absolve the sick, as is deduced from canon 6, where Pope Julius says: "If a priest refuses to give absolution to the dying, he will be guilty of souls." Roncaglia also points out, speaking generally of the dying, that absolution should not be repeated frequently within a short period of time, unless a new and certain sign of sorrow is present, than it should be given three times at most within a proportionate interval, because truly then the necessity ceases. However, it is not denied that if the loss of the senses persists for a longer time, with the actual danger of death present, absolution can be repeated several times, e.g., three or four times a day (5). 38. It is questioned: 3.

Whether absolution under the condition can be given to a sinner who is deprived of the senses in the act of sin, e.g., in adultery, or in a duel? Habert, Gonet, Juvenal, and Concina deny this, but Pontius affirms (1) Lib. 6. n. 493. — (2) Ibid. v. Utrum. — (3) Lib. 1. de Adult. c. 2. — (4) Lib. 6. n. 482. — (5) N. 482. v. Sed dices.

[*Latin ed. p. 425*]

ON THE CONDITIONS OF CONFESSION. 413 Card. Holzm., Stoz., Gormaz, et alii. These authors state that a penitent who has always been a Catholic, but has committed sins, must be absolved under the condition of death; and Merbes and Du-Pasquier rightly say that we can hold this opinion, especially because of the authority of St. Augustine, who says (1): "Those who... retain adulterous relationships if, despairing and lying within," they repent, I think they should be baptized." For who knows whether, perhaps, those carnal desires that would prevent them from being baptized have been resolved? But since baptism is the same as reconciliation, if, perhaps, the danger of ending life preoccupies the penitent. And by saying, "Who knows whether, etc.," the saint assumes that such sinners have not given any certain sign of their conversion. I believe this opinion is sufficiently probable, for the same reason as the previous question, because it is prudent to presume that any Catholic, if ever given a moment of reason, will choose the best way to avoid their condemnation. It is said that a Catholic, as Holzm. rightly notes, is like a heretic who is dying; even if he gives signs of repentance, he cannot be absolved unless he expressly asks for absolution; otherwise, it cannot prudently be presumed that those signs are given in order to confess, from which heretics vehemently recoil (2). 39. Secondly, the penitent is excused from the integrity of material confession due to moral impotence, and formal confession is sufficient in many cases: 1. if he is scrupulous and is constantly tormented by fear of going to confession, as Laym., Illzung., Elbel, and Holzm. commonly teach. 2. If the sick person lacked one or both sins in confession, or was in danger of lacking them. 3. If, when offering the viaticum, the confessor noticed that previous confessions had been nonexistent, and the sick person could not then confess fully, unless with the danger of dying without absolution, or causing scandal, as was said in the previous section, 15, no. 24. And Ronc. says this probably when there was an urgent need to celebrate or communicate, and there was no time to confess. The same applies to a priest who has been reserved and is in a state of necessity to celebrate, if there is no confessor present with the necessary authority, as we said in the previous section, no. 27. 4. If the priest was in danger of death before absolution was given. 5. When there is a serious risk of infection, because in that case, the confessor can absolve the infected penitent after hearing only one sin; Conc. Wig., Bonac., Elbel, et alii. But if the confessor wanted to hear the entire confession, the sick person is

obliged to confess fully (3). 6. If a shipwreck or battle is imminent: because it is sufficient for each person to confess only venial sins, or to say that they are a sinner in general; and the priest can then absolve everyone in general, saying: "I absolve you, etc."; the specific concurrence of penitents is not a sufficient reason to diminish the confession, as is condemned in In. XI, no. 59 (4). 7. If, from the confession of some sin, the penitent could reasonably fear a serious spiritual or temporal harm, either to himself or to others, e.g., revelation, scandal to himself or the confessor, death, or infamy. But it is understood that there is an urgent need to confess because of the danger of death, or to satisfy the communion of Easter. Or (Lugo, Henriq., etc. say) if the penitent were in mortal danger, and otherwise would have to wait for two or three days to confess; indeed, even for one day, as Suar. and Escob. say (although in another matter) (1) Lib. 1. de Adult. Conjug. c. 28. — (2) Lib. 6. n. 483. — (3) N. 824. 1. 35. — (4) N. 486.

[*Latin ed. p. 426*]

414 TRACT. XVI. ON THE SACRAMENT OF PENANCE. As will be explained in Appendix 3, regarding the Examination of Candidates for Ordination, no. 20, 8. Finally, if the penitent cannot confess a sin without revealing the identity of an accomplice (1), some Doctors, such as Navar, Innocent, Hostiensis, etc., hold that the penitent ought to conceal the sin if he cannot confess it without revealing the accomplice to the confessor; for (they say) the natural precept of preserving the reputation of one's neighbor is preferable to the positive precept of confessing one's sins fully. But this is denied by the common opinion of St. Bonaventure, St. Antoninus, Gonet, the Council of Trent, etc., along with St. Thomas (2), who says: "If one cannot express the form of the sin unless by expressing the person with whom he committed the sin, it is necessary that he express it." And St. Bernard says the same (de forma bonae vitae). The reason is that, on the one hand, the integrity of confession must be preserved as much as possible; on the other hand (as St. Thomas says), revealing another's sin is not blameworthy when there is a just reason; moreover, the person who committed the sin has, by committing it, forfeited the right to reputation, insofar as it concerns the confession that he must make. However, this must be understood only in the case of mortal sins; for, as Lug, Ronc, Viva, and Tamb say against Renzi (3), it is not permissible to reveal another's grave sin in order to confess a venial sin, or a mortal sin that has already been confessed. And even in the first case, when a mortal sin has not yet been confessed, the penitent is bound to seek out another confessor to whom the accomplice is unknown, unless (the Doctors except) doing so would cause him spiritual or temporal harm, such as would be the case if he had already declared his sin to a confessor to whom the accomplice is known, and would therefore be obliged to confess his fault twice; or if it were necessary to celebrate Mass or receive Holy Communion; or if it would require him

to travel a long distance to find another confessor; or if he would lose indulgences; or if it would cause him great distress to reveal his sin to someone other than his ordinary confessor; or if he would have to omit his usual Communion; and all the more so if he would otherwise have to persevere in his mortal sin for more than two days (as Lugo, Viva, and Renzi say). Henry believes that a delay of two days is a long time. Indeed, Antoine absolutely says that a delay of one day excuses him from the obligation of seeking out another confessor. Furthermore, mothers and wives are often excused from reporting the sins of their children and husbands to a confessor, if this would cause them grief or help them to make a better decision about how to act. Moreover, the authors excuse the penitent if he believes the confessor to be more learned, or at least more aware of his conscience, so that he can better guide him and promote the peace of his soul; all the more so, as many grave Doctors, as mentioned above, hold that it is not a grave sin to reveal a crime to one or the other prudent person nearby (4), without cause; but this would be a reason why he would also be excused from confessing a venial sin. 41. It should be noted here that, although the penitent may licitly reveal the accomplice to the confessor in the aforementioned cases, it is not licit for the confessor to ask the penitent for the name of the accomplice, even if it would serve a good end, such as to correct him or prevent harm; for Pope Benedict XIV, in the bull Ubi primum, calls this "detestable"; and it is even more detestable if the confessor denies absolution to the one who refuses to reveal the accomplice. Therefore, the Pope declares that this is a mortal sin, and imposes suspension (but of a suspended sentence) from hearing confessions on such a confessor.

(1) Lib. 6. p. 487 et 488.

(2) Opusc. 12. q. 7.

(3) Lib. 6. n. 489.

(4) N. 490.

[*Latin ed. p. 427*]

WHEN SHOULD CONFESSION, etc. 415; concerning confessions; and the papal excommunication imposed upon those who presume to do the opposite; and furthermore, to others (but not to the penitent), who know that someone has refused absolution to a confessor for this reason, the obligation of denunciation is imposed, provided that the aforementioned person did not do so out of simplicity. However, Father Concina rightly says that this prohibition should not be understood to mean that it is forbidden for the confessor to inquire about circumstances necessary for the integrity of the confession, such as those that change the species of the sin, or that it is useful to know them in order to guide the penitent; therefore, the confessor can rightly ask about the degree of the act, whether it involves a grave sin, whether the person is bound by a vow of chastity, whether the person is a slave, if they live in the same house (1). Furthermore, Fa-

ther Mazzotta says that if serious damages are feared from the accomplice, which only the confessor can avert, then the accomplice must be revealed. The author of the commentary on Antoine adds that a penitent cannot be absolved if he refuses to reveal the accomplice, since this is necessary to repair public damage. However, I say that in such a case, it is never permissible for the confessor, given the aforementioned prohibition of the Pontiff, to ask about the name of the accomplice; he can only obligate the penitent in general to reveal the accomplice to someone who can prevent the evil; but if the penitent spontaneously asks the confessor to take on this task himself and to reveal the accomplice, then the confessor does not sin, and he can certainly use this knowledge to provide a remedy; although it is usually not advisable for confessors to assume this burden of correction based on knowledge gained from confession, because this often happens with the risk of scandal or dishonor to the sacred ministry.

POINT II. WHEN IS CONFESSION INVALID, AND HOW IS IT TO BE RENDERED VALID?

42. When is confession null on the part of the confessor? — 43. When is confession null on the part of the penitent? Concerning the accomplice in a grave sin. — 44. How is confession to be made valid again with the same confessor; and is it sufficient to remind the penitent of the penance imposed? — 45. Concerning the ignorant who have not explained either the species or the number. — 46. When must confession be repeated?

42. CONFESSION can be invalid, either on the part of the confessor or on the part of the penitent. On the part of the confessor:

1. if he lacks jurisdiction;

2. if he fails to give, or to pronounce, absolution;

3. if he does not understand any of the penitent's sins; I say "any," because if he understands some, the absolution is valid, provided that the penitent receives it in good faith; in this case, only the obligation remains to confess the sins that the confessor did not hear. Otherwise, if he receives it in bad faith, knowing that the confessor either did not hear, or was sleeping, or was unaware, or did not understand the gravity of the sin, or was too lenient in absolving, even those who are not properly disposed, because in this case, the penitent sins in the very confession he is making, and therefore, the confession is certainly null. If, however, after confessing, you realize that the confessor did not hear a certain sin, but you do not know which one it is, then it is commonly said by Sanch., Tamb., Salmant., Lugo, etc., that if the confession was brief, you should repeat it; otherwise, if it was long, because in that case, it is presumed that God does not obligate the penitent to the integrity of the confession with such great inconvenience (2). Suar., Sot., Castrop., Lugo, Salm., etc., say that a confession made in good faith to a confessor who does not know the species or the number of sins is valid.

(1) Book 6, nos. 491 and 492. — (2) Nos. 498 and 499.

[*Latin ed. p. 428*]

416 TRACT. XVI. ON THE SACRAMENT OF PENANCE. is not, and should not be repeated. I say this must be understood in the case where there is no certainty of omission; for if it is certain that integrity was lacking, this must always be completed, as Salm and Lugo say; since, although a previous confession may have been valid, the second is certainly invalid when a defect is noticed (1). 43.—However, the confession is invalid from the penitent's side, 1. if he is excommunicated; for excommunication deprives anyone of the reception of the sacraments; 2. if, out of malice or culpable negligence, he omits to confess a grave sin; 3. if he does not have due sorrow or intention, especially if he does not wish to restore, as he should, goods, honor, or reputation taken away, or if he does not wish to remove the proximate occasion voluntarily; 4. if he confesses a shameful sin to the same accomplice; for, as Benedict XIV declared in his bulla *Sacramentum*, the confessor has no jurisdiction over his accomplice in a shameful sin, except in the case of death, and when no other priest, even a simple one, is present; otherwise, he incurs a papal excommunication by granting absolution, as will be extensively explained when discussing the jurisdiction of the confessor, n. 95 (2). 44.—Hence, the question arises: how is an invalid confession to be repeated, if it is to be done before the same confessor? It must first be noted here that, when absolution is delayed, it is not necessary for the confessor to distinctly recall the sins that have already been confessed, nor to require the penitent to repeat the confession; but it is sufficient that he remembers the state of the penitent in general; as commonly stated by Sylvest. Suar., Nav., Conc., Laym., Croix, etc. (3). However, it is doubtful whether this is sufficient if the confession was null. Suar. and Coninch. distinguish, and say that this is only sufficient when the confession was invalid due to a defect in the confessor's office, e.g., if he did not give absolution, or if he lacked the power to absolve; otherwise, when there was a defect in some essential part, such as if there was no disposition in the penitent, or jurisdiction in the confessor; because then, when the confession was sacrilegious, or made before a non-judge, it is not sacramental. This opinion is probable, although it is contrary to the common opinion of Navar., S. Antonin., Vasq., Medina, Lugo, Laym., Sa., Bonac., Valent., Tamb., Aversa, Croix, Salm., etc., and is very probable. These doctors say that, whatever the source of the defect, it is not necessary to repeat the confession, but it is sufficient that the penitent generally accuses himself again of the sins already revealed, and that the confessor remembers the state of the penitent, or, at most, vaguely recalls the knowledge he had of them before. The reason is: 1. because such a confession was not simply a narration, but since it was made in order to receive absolution, it can truly be called sacramental, as it already obliges with the seal of the sacrament; 2. because, although such a confession was

not sacramental, but at least a ratification of it, when the penitent accuses himself again of the sins confessed, together with the knowledge that the confessor previously had of them, it is considered sufficient to make it valid and complete. Indeed, this is admitted by Cardinal de Lugo, even if the penitent had previously declared his sins to the confessor through a simple narration; but I cannot agree with this, because then I say that neither confession can be called sacramental: not the first, because it was not made in order to receive absolution; not the second, because it lacks con- (1) Lib. 6, n. 500. See Eodeum. — (2) N. 501. — (3) N. 502. See Quer.

[*Latin ed. p. 429*]

CONFESSION, etc. 417. The confession of any particular sin is required by the Council of Trent; but this can only be admitted if the confessor, while the penitent accuses himself of the sins narrated, has a distinct knowledge of them (1). Many grave doctors, such as Tollet, Vasquez, Lamy, Sanchez, and Bussemaker, add that when a confession has been made in order to obtain absolution, not only is the penitent's confused recollection sufficient, but also the mere imposition of penance; because from the knowledge of the penance alone, the confessor can form a judgment regarding the penitent's state. Castrop, St. Antonin, Sylvestrini, and others, apud Croix, add that even the mere fulfillment of penance is sufficient, even if neither the confessor nor the penitent remembers what the penance was; but this opinion seems to me to be too broad, because the priest, as we have said, must form a judgment, at least in a general way, regarding the state of the penitent, both in order to grant absolution and in order to impose penance, which in such a case must certainly be imposed in order to complete the sacrament (2). 45. Tamburrini says, and Father Segneri agrees (in his instruction to confessors), that the uneducated and children who have always confessed in a confused manner, without distinction of species and number of sins, but in good faith, are not bound to repeat their confessions. But I do not see how this opinion can be admitted, because, as Lugo, Navarret, Bonacich, and Salm, among others, say, they are always bound to explain the species and number of sins omitted, when they realize it, because although their confessions may be valid, the obligation to materially complete the confession always remains (3). However, Salm, along with Dicastillo, Fagundes, and Henriquez, admit Tamburrini's opinion in the case where the uneducated person has previously led a life always in conformity, so that it is possible to judge of the past from a confession of one year. But I say that this can be admitted when the confessor, from the beginning of the confession, has understood this uniformity of life, even for past years; otherwise, when, at the end of the confession, the defect of the past is recognized, and the knowledge of the distinct sins in the penitent's mind does not remain: for although it is sufficient for the confessor to grant absolution with the confused knowledge of the penitent's state, it

is nevertheless always necessary that he once form a judgment of the sins in particular (4). 46. Furthermore, Filliu, Gobius, Holzmüller, Elbel, Croix, and Mazzola, along with Father Segneri, rightly say that penitents are not bound to repeat their confessions when presumption and, consequently, possession, are valid, unless nullity is established. It does not prevent us from saying that, when a precept exists, and there is doubt about its satisfaction, possession is equivalent to obligation; because it is answered that this applies when there is doubt about the act of satisfaction; but not when it is certain that the act has been completed, because then, in this case, possession is equivalent to the value of the act, according to a principle commonly accepted by the doctors; thus Lamy, Croix, Spotorno, and Mazzola, along with Navarret, who says: "Presumption is equivalent to the value of the act, over other considerations (5)." And regarding the obligation to repeat the confession, Habert presents the best rule, and says: if it is observed that the penitent, after confession, avoided opportunities, and resisted temptations for a time, then it can be judged that the confessions were valid; otherwise, if it is observed that, shortly after, he easily relapsed, as he did before; for it is impossible for him who truly repents, and who has firmly resolved to change his life for the better (1) Lib. 6, n. 502, Dubium 2. (2) Ibid., Dubit. 2 et 3. (3) N. 104, and ibid., v. Dicit. II. (4) Ibid., v. Dicunt III. (5) N. 505, XII, 27.

[*Latin ed. p. 430*]

418 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. It is easy to relapse, or at least to fail to persevere for some time, or to offer, at least, some resistance; hence, if someone, after confession, immediately falls into sin without any effort, he exhibits a morally certain sign that his previous confessions were invalid, because sorrow and purpose were lacking (1). CHAPTER IV. ON SATISFACTION, OR ON PENANCE. Since, when the guilt is remitted to the sinner, the entire penalty is not always remitted, but rather, most often, some satisfaction remains to be fulfilled; therefore, the third part of the sacrament of penance is sacramental satisfaction, which is called a non-essential part (because even without it, the sacrament can be valid); but it is an integral part, since it contributes to the sacrament being complete. POINT I. ON THE IMPOSITION OF PENANCE. 47. On the obligation of imposing penance. Whether after absolution, etc. — 48. Penance must be imposed out of obligation. — 49. When it may be lessened. Concerning the physically infirm. — 50 and 51. Concerning the spiritually infirm. — 52, 53 and 54. Which kinds of penances should be imposed. 47. — Many things must be noted concerning this. Note 1. The confessor is bound to impose penance when granting absolution, as declared by the Council of Trent, Session 14, Chapter 8: therefore, he sins if he does not impose it, and indeed gravely, if the confession is of mortal sins; if it is of venial sins, or of mortal sins already confessed, it is probable (as Lug, Dicast, Salm,

Mazz, etc., say) that he does not sin gravely (2). And even if the penitent immediately after absolution confesses another sin, the confessor should also impose a new penance, at least a light one. Bonac, Croix and Mazzot say that it is sufficient to impose the previous penance again at that time; but Castrop, Roncag, etc., rightly deny this; because, although it is possible to impose a duty arising from another precept, as will be said below, it is not possible to impose a duty arising from the same title of penance (3). Penance is usually imposed before absolution, so that the confessor may see how the penitent receives it; but it can sometimes be imposed immediately after absolution; in that case, it is morally united with it, as commonly held by Busemb, Salmanticenses, Viva, Diana, Sporer, etc. (4). 48. — Note 2. Penance must always be imposed under some obligation. But is it doubtful whether the confessor can impose a grave penance under a light obligation? Bonac, Coninch, etc., deny this, saying that it is only the legislator who can impose a grave matter under a light obligation, not a simple minister, such as a confessor. But it is more common and probable that Suar, Filliuc, Henriq, Fag, Bus, Segneri, Tamb, Dicast, etc., affirm this, because the priest, in the sacrament of penance, does not perform the office of a simple minister of Jesus Christ, as in the other sacraments, but is a true judge instituted by the Savior, with the power to absolve from sins, and to bind through penance, so that the obligation of this depends entirely on the precept of the confessor (5). 49. — Note 3. Concerning the quantity of penance, it must be proportionate to the sins; but in this, the words of the Council of Trent, Session 14 (2) Lib. 6, n. 505, v. Et quoad. — (2) N. 508. — (3) N. 515, Dubit. 2. — (4) N. 514, v. 8, etc. — (5) N. 516.

[*Latin ed. p. 431*]

ON THE IMPOSITION OF PENANCE. 419 c. 8. It is written there: "Therefore, the priests of the Lord ought, as far as the spirit and prudence suggest, to impose salutary and suitable penances, according to the nature of the sins and the ability of the penitents, lest, if they should connive at sins, and be too lenient with the penitents, they become partakers in the sins of others by imposing very light works for most grievous offenses." Thus, the quantity of penance is left to the confessor's judgment, as far as the spirit and prudence suggest. Hence, it follows that penance can be lessened for many reasons. 1. If the penitent approaches with great contrition, or if he has previously performed many works of penance (1); 2. During the time of a jubilee or plenary indulgences, but even then some penance must be imposed, as declared by Benedict XIV, both because no one can be certain of obtaining a plenary indulgence, and because the sacrament must always be completed (2). And when the penitent needs medicinal penance, this must be imposed, as Mazzot rightly observes. 3. If the penitent is physically infirm, the Roman ritual states that a heavy penance should not be imposed on the infirm, but only for a time, when

they have recovered. However, if the infirm person is in danger of death, or has lost the use of his senses, he can be absolved without any penance; although it is always advisable to impose some light penance upon him, such as kissing the crucifix, or invoking the names of Jesus and Mary, at least in his heart, etc. It is not advisable to impose upon the infirm, as penance, that he patiently suffer the inconveniences of his infirmity, for this can be the cause of many scruples for him. On the contrary, Salm rightly points out that if the infirm person is able to make amends through almsgiving, these should certainly be imposed by the confessor, since everyone is obligated to do the penance that he can (3). 50. — It is possible 4. to lessen the penance if the penitent is weak in spirit, so that it may be prudently feared that he will not fulfill the penance proportionate to his sins; this is taught by Suarez, Scotus, Navarrus, Layman, Abelly, Castrop, Habert, Gonet, Gerson, Cajetan, Natalis of Alexandria, and Anaclasius; and also by St. Charles Borromeo in his Instruction to confessors, who advises confessors to lessen the penance according to the dispositions of the penitents, warning them: "This must be done (these are his words) so that they do not abandon that which, for a small reason, ought to have been imposed upon them (note), with the danger of their salvation." St. Thomas also teaches this, whose words we will quote shortly. It is true that in the Council of Trent it is said that penance ought to correspond to the quality of the sins; but it is immediately added that it must also be salutary and suitable for the ability of the penitents. Salutary, namely, useful for the salvation of the penitent; and suitable, namely, proportionate not only to the sins, but also to the strength of the penitent. Hence, those penances would not only be unsalutary and unsuitable, but would be more harmful than beneficial to the penitent, if they were beyond his strength due to his spiritual weakness. In this sacrament, amendment is considered more important than satisfaction; therefore, the Roman ritual (on the sacrament of penance) states that the confessor, when giving penance, must take into account the disposition of the penitent. And St. Thomas (4) says: "Just as a physician does not give medicine so effective... that, because of the weakness of the body, a greater danger might arise, so too, moved by divine inspiration, the priest does not always impose the entire penalty that is due for a particular sin, lest the infirm person despair and completely abandon penance."

(1) Book 6, chapter 507.

(2) Number 519.

(3) Number 507.

(4) Supplement, question 18, article 4.

[*Latin ed. p. 432*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE. "Furthermore," he says elsewhere (1), "just as a small fire is extinguished if many

logs are piled upon it, so too, it can happen that the small affection of contrition in a penitent is extinguished by the weight of the penance; and he adds: 'It is better that the priest should indicate to the penitent the amount of penance that should be imposed upon him, and nevertheless, he should impose only what the penitent can bear.'" And elsewhere he adds (2): "It is safer to impose a lesser debt than a greater, because we are more easily excused before God for great mercy than for excessive severity, since such a defect will be remedied in purgatory." Chrysostom stated this earlier, in chapter Alligant, 12; causes 26, question 7, saying: "Just as if you place a bundle on the shoulders of a young man that he cannot carry, he must either cast away the bundle or be broken under its weight; so too, to a man to whom you impose a heavy burden of penance, it is necessary that he either reject your penance or, while bearing it, sin again, scandalized by the fact that he cannot endure it." Cajetan and especially St. Antoninus (3) also say that the penance should be imposed that the penitent is judged to be able to perform, and which he then willingly accepts. And if the penitent protests that he does not have sufficient strength to perform the appropriate penance, then St. Antoninus concludes: "Then, whatever he may have done wrong, he should not be dismissed without absolution." St. Thomas says that it will be sufficient to impose upon him, in general, whatever good he has done, using the same words of the Ritual: "Whatever good you have done, etc.," and that these works, when joined with the sacrament of penance, as Angelicus (4) teaches, acquire a greater value in satisfying for the sins committed. Furthermore, many doctors, including Lugo, Petrocor, Croix, and Salm, along with the aforementioned St. Antoninus (5), probably add that it is a just reason to lessen the penance if the penitent shows a greater zeal for penance. Oh, how beautiful is the advice of St. Thomas of Villanova (6): "Impose a lighter penance, and advise a more severe one!" It is advisable to make the penitent understand the penance he deserves; and it may also be helpful to indicate the ancient penances prescribed by the canons of penance (these are found in the work (7), noted). It will also be helpful, as St. Thomas of Villanova says, to suggest a more severe penance to the penitent, but then it is necessary to impose only that which the confessor judges he will be able to perform. St. Francis de Sales (8) suggests, and the Parisian ritual (9) says the same, that it is advisable to ask the penitent whether he is able to perform the penance; otherwise, it should be changed. St. Charles Borromeo (10) also warned, saying: "He should impose a penance that he judges the penitent to be able to perform." Therefore, sometimes, if it seems advisable, he will ask whether he can, or whether he doubts, perform the penance imposed upon him; otherwise, he will change it, or lessen it. Furthermore, it often happens that among the works enjoined, a certain grave penance is imposed, but not under a grave (as was said in the preceding number), or some work prescribed

from elsewhere, or a debt, as we shall say below. 51. From this, it follows how imprudently confessors behave who impose a penance that is beyond the strength of the penitents. How often do these confessors hesitate to readily absolve recidivists who are unprepared, and even those who are in the very near occasion of sin, and afterwards, foolishly...

(1) Quodl. 3, art. 28.

(2) Opusc. 65, 2, 4.

(3) 3 part, title 16, chapter 30, and in the moral work, book 6, no. 50, throughout.

(4) Quodlib. 3, art. 28.

(5) See ibid.

(6) Sermon, Feria 6, post Domijae. Latare.

(7) Book 6, no. 530.

(8) Instruct. ad confess. c. 8.

(9) Book 6, no. 509.

(10) (Implied, as the passage continues to discuss the same topic)

[*Latin ed. p. 433*]

ON THE IMPOSITION OF PENANCE. 421 Some believe that they heal souls by imposing the most grievous penances, even though they see that those to whom they are assigned cannot fulfill them; they impose, for example, that on every eighth day of the year they confess; that he who is not accustomed to recite even five decades of the Rosary in a week should recite fifteen decades every day; they impose fasts, disciplines, and mental prayer on those who have never even heard of such things. And what will be the result of this? The result will be that, although those to whom these things are assigned may accept them unwillingly, in order to obtain absolution, they will nevertheless afterward neglect to carry them out; and believing that they have fallen into a new sin, or rather, thinking (especially the uneducated) that the confession they made was of no consequence, because they have not fulfilled the imposed penances, they return to their former way of life; and terrified by the weight of the imposed penances, they shrink from confession, and thus begin to grow worse in their sins. And here is the fruit that is gathered to the ruin of so many poor souls through such satisfactions, which are called suitable, but which would better be called most unsuitable. Furthermore, except in cases of very grave infirmity, or extraordinary compunction, it would not be proper for a confessor to add a light satisfaction to grave sins, one that induces only a slight obligation; for, although (when it is expedient) a work may be added that is light, considering the sins of the person, nevertheless a grave satisfaction must always be imposed that obliges under a grave (1). 52. — Note 3. concerning the quality of penance, that perpetual or very burdensome penances should not be imposed, such as entering religion, and all the more, entering into

marriage, which requires freedom in every way; likewise, perpetual vows should not be imposed; indeed, even if the penitent wishes to make a vow, for example, not to relapse, he should not be permitted to do so permanently, but only for a time, so that he may see how he observes it. Speaking, however, of conditional penance, for example, fasting, or giving alms, whenever it occurs, it can certainly be imposed, and when it is imposed, the penitent is bound to accept and fulfill it, as Suar., Laym., Bonac., Salm., and Aversa rightly say (against Dian., etc.); but it should not be imposed for a long time, because afterward it is easily neglected and sins are multiplied; therefore, it can be imposed only for a short time, such as for a month, or until the next confession (2). Also, it should be noted that public penances should not be imposed for hidden sins; however, a confessor is bound to impose them if another way cannot be found to avoid scandal, or to repair damage to the honor of someone. But the penitent should not be forced into public penance if he refuses, and if he can repair the scandal in another way, for example, by frequently receiving the sacraments, by visiting churches, by joining a congregation, etc. (3). 53. — Note 6. that works of satisfaction should be penal; for (as is noted in the Council of Trent, Session 14, Chapter 8), satisfaction should not only be medicinal for the preservation of a new life, but also retributive for the satisfaction of sins committed. These penal works are reduced to fasting, almsgiving, and prayer. Under the name of fasting come all kinds of mortifications of the senses. Under the name of prayer also come confessions, Communions, visits to churches, and even internal acts of charity, contrition, or meditation, which acts can certainly be imposed as penance, according to the common teaching of the Doctors (4). However, it is noted that prayer and almsgiving, and any good work, are valuable for (1) Lib. 6. n. 510 in fine. v. Ex his. et 518. — (2) N. 511. — (3) N. 512. — (4) N. 514.

[*Latin ed. p. 434*]

422 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. as a penal work, as commonly taught by theologians; for with respect to our children of Adam, after the state of fallen nature, any virtuous action has the nature of a penalty, because, owing to the original justice lost, we are all inclined to evil and to our own advantages. Thus, Val. Castr., Laym., Pitig., Salm., and many others (1). The same learned author recently wrote in the *Instruction for New Confessors* (2), stating: "It must be understood that we do not say, nor do we consider it useless, that penance, whatever it may be, which is imposed in the sacrament, is effective in satisfying; all the more so, because in the present state of fallen nature, every good work is somehow afflictive and penal." This is also confirmed by St. Francis de Sales (3), who says: "One suffers by fasting, another by serving the sick, by hearing confessions, by preaching, by praying, and by similar actions. This penance (of prayer) is more beneficial to one than the penance (of fasting);

for prayer, besides taming the body, brings forth more desirable fruits." This is further confirmed by St. Thomas, who says: "Every prayer has the nature of satisfaction; for although it has the sweetness of the spirit, it nevertheless has the affliction of the flesh, as Gregory says" (on Ezekiel, homily 17): "As the strength of intimate love grows in us, the strength of the flesh is weakened" (4). It is also possible to impose as penance some work to which the penitent is bound, such as attending Holy Mass on a festive day, fasting during vigils, as commonly stated by Sot., Suar., Laym., Sanch., Valent., etc., because when such a work is satisfying, it is raised by the sacrament to the merit of sacramental satisfaction. This can be done when the penitent is recognized as very weak in spirit; otherwise, in general, some free work should be imposed; therefore, whenever the confessor does not specify a particular work, it is understood that a distinct work has been imposed. However, if the confessor imposes attendance at Holy Mass for a month, the penitent is not obliged to attend on two festive days; this is commonly stated by Castrop., Bonac., Coninc., Laym., Sanch., Croix, Salm., etc. It is also possible to impose a work to be applied to others, such as to the souls in Purgatory, as is more probably stated by Lugo, Tournel, Busemb., etc. (5). It is also possible to impose abstaining from some good work, e.g., from Communion and fasting, as is probably held by Suar., Molin., Lugo, Spor., and Salmant., because such cessation can certainly be an act of virtue, at least as an experience of obedience to oneself and to the confessor. But this should not be practiced except with devout souls, and not even with them, if it could lead others to suspect that such cessation is a penance imposed by the confessor (6). However, the penitent cannot satisfy through others, as stated in proposition 15, which was condemned by Alexander VII. It is true that the confessor can grant to the penitent that he may do so, as stated by Sot., Suar., etc., with St. Thomas: for then it would not be the work itself that is the satisfaction, but the care of it, which would be the sacramental satisfaction, as noted by Laym., Vasq., Bon., etc., with Mazzotta (7). 54. Regarding practice, the rule requires that works that restrain the flesh be imposed for sensual sins, almsgiving for sins of avarice, prayer for blasphemies, etc. But it must be considered what is more expedient.

(1) Valent. tom. 4. disp. 7. quæst. 14. punct. 3. Castrop. dist. un. p. 21. 2 3. n. 1. Laym. tr. 6. de Sacram. Penit. cap. 15. n. 9. Pitig. 2. p. dist. 15. quæst. 1. art. 3. concl. 1. Salmant. tract. 6. de Penit. cap. 10. n. 26.

(2) Instr. pro nov. conf. p. 1. cap. 16. n. 373.

(3) Introd. ad vitam devotam cap. 25.

(4) S. Thom. Suppl. f. 15. art. 3.

(5) Lib. 6. n. 514. Dubit. 2.

(6) Ibid. v. 7. Potest.

(7) De Penit. q. 5. in 4n.

[*Latin ed. p. 435*]

ON ACCEPTANCE, etc. 423 It is advisable, or rather, more useful for the penitent. Although it is most useful to impose frequent attendance at Mass, mental prayer, and the Rosary, it is nonetheless the experience of some that these practices can be harmful to those who have had little or no experience with them. Generally, the following practices are useful for all: to join some congregation; to elicit sorrow each evening (at least for a time), and to renew the intention each morning, saying with St. Philip Neri: "Lord, do not take away from me today the grace of Your presence, lest I become a traitor to You." To visit the Most Holy Sacrament daily, and also the image of the Most Blessed Virgin Mary, asking for perseverance from them; to say at least a third part of the Rosary, or at least the Angelic Salutation, in the morning, at midday, and in the evening, saying: "My Mother, help me today, that I may not sin against God." (However, I am usually accustomed to prescribe, or at least to advise, this penance, which is to recite the Angelic Salutation three times with the aforementioned supplication, to those who do not usually practice it); when going to bed, to say: "If it were to be my lot to die in the flames of hell:" or to say: "The day will come when it will be my lot to die in this bed:" Those who know how to read, and especially clerics, should read daily some book on spiritual matters. St. Francis de Sales (1) warns that the penitent should not be burdened with too many things, lest he be confused and terrified.

SECTION II. ON THE ACCEPTANCE AND SATISFACTION OF PENANCE.

55. The obligation of accepting penance.

56. The obligation of fulfilling it.

57. He who delays penance.

58. Whether the intention of satisfying is required.

59. If the penitent forgets the penance.

60. What if he fulfills it in mortal sin.

61. Who can change the penance. 55. Regarding the acceptance of penance, the Doctors commonly teach that the penitent is bound to accept it when it is reasonable; because in this, the confessor is the true judge to whom he ought to obey. Therefore, Suarez and Bona, after the Council of Trent, call it a rash opinion, as do Navar and Cajetan, etc., who said that the penitent could refuse penance, in order to satisfy for it in Purgatory (2). Busembach, with Soto and Reginal, says that if the penitent does not want to accept another penance, even if it is a grave one, when he deserves a grave one, the confessor can certainly absolve him. But I do not agree

with this, according to what we said in n. 51 in fine, and according to what Lugo teaches; because just as the confessor would sin if, without a just cause (such as infirmity), he wanted to impose a light penance for grave sins, so too does the penitent sin, who, when confessing grave sins, does not want to accept anything but a light penance. Furthermore, Suarez, Laym, the Council of Trent, Busembach, Elbel, Holzmüller, and Sporl, say that if the penitent believes that the penance is too severe with respect to his sin, or at least with respect to his strength, and the confessor does not want to moderate it, he can rightly, after refusing absolution, seek another confessor.

56. Regarding the satisfaction of penance, it should be noted that: 1. He sins gravely who does not fulfill a grave penance imposed for grave sins; but, on the contrary, he sins only venially who omits a light penance imposed for light sins, or for sins already...

(1) Instruct. Conf. ff. e. 8.

(2) Lib. 6. n. 516.

(3) Ibid.

[*Latin ed. p. 436*]

424 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. Others, according to the common practice, are absolved. It does not impede to say that the sacrament remains incomplete; indeed, since it is essentially complete, the obligation to complete it is only slight; since the matter is only slight; but the Rosary of the Blessed Virgin, even if consisting of five decades, cannot be such a penance. A greater doubt arises if a penance of a serious nature is imposed for venial sins or sins already confessed. Then, according to Bonaventure, the Council of Trent, and Roncaglia, it ought to be fulfilled with serious intention; but it is probable that Soto, Navar, Laym, Lugo, Sporer, Croix, and others deny this. The reason is that, in such a case, just as the confessor cannot impose a serious penance with a serious obligation, so neither is the penitent bound to fulfill it with a serious obligation. However, I do not deny, with Roncaglia, that if those sins, although venial, were very conducive to mortal sin, it is fitting for the confessor to impose a serious penance, in order to free the penitent from the danger of mortal sin; and then the penitent is bound, if he desires to be absolved, to accept and fulfill it with a serious obligation (1). As for whether the circumstances of the penance, e.g., kneeling, being barefoot, etc., imply a serious or slight obligation, this depends on the serious inconvenience that the circumstance brings with it, as the Doctors commonly say (2). 57. — Note 2. that although there is no obligation to fulfill the penance before Communion, as required by proposition 22, condemned by Alexander VIII, nevertheless, he sins who delays it for a longer time, e.g., for a year, and even for six months, as Mazzotti correctly says; but certainly not he who delays it for a month, provided that the penance is not

medicinal, as Mazzotti and Croix rightly point out, and provided that he could fulfill it later. Moreover, he does not sin grievously who transferred the fast of Saturday to another day, or who postponed Communion from one month to 6 or 8 other days, as it is probably said (against Salmant and Lugo), Suarez, Castrop, Sporer, Holzm, Mazzotti, with Roncaglia (who, however, rightly makes an exception if the penance were medicinal). Indeed, Croix, with Gobani and Stephen, etc., believes that it is not mortal if one omits one of ten Communions (3). However, he who omits fulfilling the penance on the appointed day is not thereby released from it; for when a day is assigned by the confessor, he is always understood to be additionally intended, namely to urge, but not to terminate, the obligation (4). However, Bonaventure, Concina, Gobat, etc., say through Mazzotti (5), that if the confessor imposes Communion on each feast of the Blessed Virgin, or a fast on any Saturday in her honor, the obligation terminates after that day; because then the confessor seems to intend to obligate the fast only for that day. There is no doubt that the penance can be fulfilled at the same time as another fulfills a precept, as, for example, reciting the Rosary while hearing Mass, as was said above in treatise 2, no. 30. But when the confessor imposes two Masses to be heard, on the same day, it is understood successively, not at the same time, as Mazzotti correctly says with Croix (6). 58. — It is asked 1. whether the penance must be fulfilled with the intention of fulfilling it? Some affirm, as Vasquez with Mazzotti (7), saying that in other precepts it suffices to perform the work commanded, but in this, more is required, namely, the intention of completing the sacrament.

[*Latin ed. p. 437*]

ON ACCEPTANCE, etc. 425. Sanchez and Lugo (1) deny, along with Suarez and the common opinion, that penance can be accepted. Lugo offers another reason; but the one that carries more weight with me is that the penitent, when accepting penance, certainly intends to fulfill it; therefore, whenever he performs the assigned task, he does so with the habitual intention of satisfying his penance; and why is this habitual intention not sufficient when a habitual intention is sufficient to receive any sacrament? Therefore, everyone, in any act of penance that he performs, always intends, by general will, to satisfy the debt of the prior obligation, rather than others by way of substitution. 59. — It is questioned: 2. To what extent is a penitent bound who has forgotten his penance? Some, as Busemb. S. Anton., etc., hold that he is bound to repeat his confession, so that the sacrament may be made complete. But, commonly, and with very strong and probable reasons, Suarez, Vasquez, Laym, Castr, and others deny this, even if he has forgotten it culpably, as Sotus, Navar, Lugo, Salm, Croix, and Holzmeyer say, because in the latter case, the penance given is impossible, and in the former, the law is very doubtful whether sins already once directly forgiven must be repeated in order to complete the sacrament.

However, if the penitent believed that the confessor could remember the penance imposed upon him, he would certainly be bound to go to him again, so that he might ask him about it (2). 60. — It is questioned: 3. Can a penitent who is in a state of mortal sin satisfy his penance? Some deny this, but commonly Suarez, Navar, Lugo, Conc. Ronc, Salm, etc., affirm it, because, according to the general rule of St. Thomas, which has been repeated many times, the end of a precept does not fall under the precept. Here, they oppose a certain passage from the same Angelic Doctor; but the Doctor does not say anything there except that an act performed in sin deserves punishment, but he does not say that it does not satisfy (3). However, the common opinion among all is that a penitent, when satisfying his penance in a state of mortal sin, does not sin mortally. Furthermore, I believe it is probable, with Suarez, Laym, Bonacina, etc. (against others), that he does, at least, sin venially, when, in satisfying his penance in a state of mortal sin, he places an obstacle to the partial effect of the sacrament (4). 61. — It is questioned: 4. Who can change the penance? It is certain and common among the Doctors (whatever Diana may say with a few others) that the penitent cannot change his penance by himself, even to a manifestly better one; for just as penance cannot be imposed except by a confessor, so neither can it be changed except by him alone (5). It is doubtful whether it can be changed by another confessor without repeating the sins? Castrop, Lugo, Laym, Concin, Holzmeyer, Sporer, etc., probably deny this, saying that the penitent should then repeat his confession with that confessor, at least in general terms, so that he may inform him of the state of his conscience. But many others also probably affirm it, as Tolet, Navar, Bonac, Sa, and it is probable that Lugo, Laym, Salm, Holzmeyer, Sporer, etc., also say the same. The reason is that in this subsequent confession, it is not a matter of judging the sins brought up in the prior confession, since that judgment has already been made; but only of the weakness of the penitent in satisfying his prior penance. It is objected: but penance must be medicinal, and how can a medicine be prescribed by one who does not know the infirmity of the wound? It is answered that the confessor, from the same penance imposed, can gather material for arguing about the sins for which that penance was imposed, and thus he can guide himself in changing or diminishing it (6). And Navar, Sporer, and Tamb. probably say that confession (1) De Pœnit. d. 24. n. 43. — (2) Lib. 6. n. 520. — (3) N. 522. — (4) N. 523. — (5) N. 529. Resp. 3. — (6) N. 529. Dub. 1.

[*Latin ed. p. 438*]

426 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. It is not required that the penitent be able to change his penance by his own power, when he foresees that he will most likely neglect it (1). Some Doctors, such as Castrop, Sanch, Bonac, etc., permit even an inferior confessor to change the penance imposed by a superior, due to reserved cases. But this is rightly

denied by Gonet, Suar, Lugo, Holzm, Spor, the Council of Conninc, Valencia, Renzi, etc., because an inferior has no power to change the judgment of a superior in a previously formed case; this could only be admitted, as Suar, Bonac, Renzi, Med, etc., state, when the penitent finds it difficult to return to the superior, and there is a serious reason to change the penance: because then the consent of the superior is reasonably presumed (2). It is doubted whether the penance can be changed outside of confession? The answer is: if the confessor is another, it is certain that it cannot be done. But if it is the same, some authors admit that it can be done even after 8 days; but this is rightly denied by the common opinion of Bonac, Suar, Nav, Salm, etc., who scarcely allow the confessor to do so immediately after absolution, before the penitent departs from the confessor (3). Nevertheless, after the change has been made, the penitent can always choose the original penance, as taught by Suar, Less, Bonac, and others, with P. Mazzota (4). POINT III. ON SATISFACTION THROUGH INDULGENCES. 62. Concerning indulgences. — 63. Whether one can obtain a plenary indulgence. — 64. Concerning the Jubilee, and the many things declared concerning the Jubilee by Benedict XIV. — 65. Whether all works must be completed within one week; and here, concerning prayer and almsgiving, and also concerning commutation. — 66. Whether reservation and censure are removed by an invalid confession. — 67. Whether one sins after being absolved if he does not fulfill the works. — 68. He who forgets the reserved matters. — 69. He who sins with confidence in the Jubilee. — 70. Whether before satisfying the penalty, etc. — 71. In the Jubilee, from which cases, and censures, can one be absolved. — 72. Some things are noted concerning the Holy Year. 62. — SPEAKING generally of indulgences, an indulgence is defined as: "The grace by which temporal punishment is remitted, through the fulfillment of a prescribed work; and this is done through absolution for the living, and through suffrage for the dead." The Council of Trent, in Session 25, Decree on Indulgences, declared that the Church has from God the power to grant indulgences, and that it has used this power from ancient times; therefore, the Council condemns with excommunication anyone who says that indulgences are useless, or who denies that this power exists in the Church. Three things are required to obtain indulgences: 1. That there be a reasonable and proportionate cause. 2. That the prescribed works be fulfilled. 3. That the person be in the state of grace, at least when the last prescribed work is performed; otherwise, he will not gain the indulgence, neither for himself nor for the dead, whatever others may say (5). It should be noted that an indulgence does not pass with death, unless there is a clause, "At our pleasure." It should be noted that indulgences should be understood as the word "indulge" sounds; because an error, even if common, does not supply this. On the contrary, since they are graces, they are to be interpreted broadly; hence, if the time is not determined, they are to be understood as perpetual. It should be noted that an indulgence is either

plenary, or total, which remits from all punishment; or partial, such as the seven and forty days, and the hundred days, by which that punishment is understood to be removed, which would be incurred by fasting for those years, or days, which are expressed in the indulgence (6). (1) Book 6, n. 529. Doubt 1, at the end. — (2) Ibid. Doubt 2. — (3) Ibid. Doubt 3. — (4) On Penance, question 5, chapter 2. — (5) N. 533. — (6) N. 534 and 535.

[*Latin ed. p. 439*]

DE REMISSIONE, etc. 427 63. — Busembus affirmavit quod indulgencia pœnitentialis non conceditur illis qui non sunt immunes ab omni peccato, etiam veniali. Sed multi alii auctores, sicut Laym, Wigandt, Sporer, Viva, Pellizar, et Renzi, tenent quod, quamquam peccatum sit veniale, si peccatum non est remissum, nec pœna potest remitti, ut est certum secundum Sanctum Thomas (1), tamen peccatum veniale non remissum non impedit remissionem pœnæ debita pro aliis peccatis iam remissis; quia, sicut non repugnat ut culpa unius peccati venialis remittatur, quin culpa aliorum remittatur; ita etiam de pœna dicendum est; et non sine causa talis intentio pontifici tribuitur (2). In sectione sequenti, loquendo de jubileo, dicemus alia quæ etiam ad hanc materiam indulgentiarum pertinent. 64. — Procedendo igitur ad locutionem de jubileo, antequam ad dubia quæ super hac re occurrunt descendamus, multa hic annotari oportet, quæ Benedictus XIV in sua constitutione, *Inter præteritos*, edita die 3 decembris 1749 (3), declaravit, in qua (ut ipse alibi declarat) voluit tollere multas quaestiones quas super hac re doctores agitabant. Ea quæ declarata sunt, sunt sequentia: 1. Clausula *Verè pænitentibus et confessis* in jubileo intelligenda est de vera confessione, contra eos qui opinantur non opus esse confiteri cum qui a culpis gravibus erant immunes; ita in jubileo, sed pro aliis indulgentiis, ait pontifex, hoc pendere ab indultis, si requirant confessionem ut conditionem, an ut dispositionem (nota quod Clemens XIII declaravit semper requiri confessionem ad lucrandas indulgentias). 2. Omnes visitationes ecclesiarum præscriptæ debent uno die compleri, incipiendo a media nocte ad mediam noctem, aut a vesperis ad vesperas alterius diei. 3. Indulgentiæ concessæ *Ad beneplacitum nostrum* morte pontificis expirant. 4. Indulgentiæ pro vivis non possunt applicari pro defunctis. 5. In jubileo non potest absolvi hæresis externa. 6. Clausula, *Commutatio votorum fiat dispensando*, intelligitur ut commutatio non sit multo inferior opere promisso. 7. Facultas commutandi opera pia non intelligitur in confessionem aut communionem (præterquam cum pueris), nec in orationem necessariam in visitatione; nec cætera opera præscripta possunt commutari in ea quæ alia causa iam debentur. 8. In quolibet jubileo vetitum est confessario absolvere proprium complicem in peccato turpi. 9. Jubilei facultate non gaudent, qui parati non sunt ad illud lucrandum, et ad operibus præscriptis satisfaciendum. 10. Vota tantum intra confessionem commutari possunt. 11. In jubileo a confessario semper debet aliqua pœnitentia

in confessione injungi. 12. Non possunt commutari vota in damnum tertii, et præcipue votum perseverantiæ quod in aliquibus congregationibus emittitur, nam illud contractus naturam assumit. 13. Qui in mortale post confessionem labitur, iterum confiteri debet si indulgentias jubilæi lucrari cupit, ut saltem ultimum opus injunctum in statu gratiæ ponatur, sed non adest obligatio replicandi visitationes. 14. Ad lucrandas indulgentias sufficit oratio vocalis, et qui mentaliter orat, adjungat aliquam vocalem. 15. Facultate jubilæi semel tantum quis gaudere potest; sed indulgentias, qui opera præscripta repetit, utique pluries lucrari potest: hoc tamen non intelligitur de indulgentiis concessis visitantibus præscriptis diebus aliquam ecclesiam. 16. In concessione facultatis absolvendi a censuris *byllæ Cænæ*, non includitur facultas ab- (1) Suppl. q. 27. a. 1. — (2) N. 534. v. Certum. — (3) In Bull. tom. 5. p. 140 et edit. Mechl. t. 8. p. 6.

[*Latin ed. p. 440*]

428 TRACT. XVI. ON THE SACRAMENT OF PENANCE. Concerning the removal of external impediments from heresy. 17. He who has already been absolved from censures, or dispensed from a vow, does not incur them again, unless he avails himself of a jubilee. 18. The faculty granted to nuns of choosing a confessor is understood to be of one approved for nuns (1). It should be noted here that religious are able to confess before any priest approved by the ordinary, even a secular priest, as was declared by Gregory XIII in the writings of Peyrin (2), and also by Alexander VII, in the constitution *Unigenitus*, § 65. — Question: 1. Whether, in order to gain a jubilee, all the prescribed works must be completed in either of the two weeks? Castrop, Bonac, etc., deny this; Layman agrees, if there is a valid reason. But Sanch., Lugo, Sporer, Renzi, Viva, etc., affirm it, and I also adhere to this view, both because this is the practice of the faithful, and because it seems to be the meaning of the indulgence, since it is granted to him who completes the works during the days of one (not both) of the two weeks. However, it is most probable that confession and Communion can be performed both on the first day and on the immediately following Sunday (3). Sanch., Ugol., Busemb., etc., say that he who neglected to gain the jubilee in his homeland could rightly gain it elsewhere, provided it still lasted there. Furthermore, Bonac. and Diana state that it can be gained even in the homeland, if the person, through invincible ignorance, did not know that the jubilee had been announced (4). Speaking here of the work prescribed for gaining the jubilee, concerning vocal prayer during the visitation, some require 7 Our Fathers and Hail Marys; others say that five are sufficient. Concerning alms, two things must be considered: first, the words of the indulgence, whether they state that it is for everyone, or according to one's devotion; second, the reason; for if the alms are given to support some pious work, then they should be proportionate to one's ability; but if they are given solely to exercise mercy, then any small sum is sufficient.

Even the poor should give alms; but for religious, members of a family, and for wives, it is sufficient if, with their consent, alms are given for them by their superiors. Finally, concerning fasts, if anyone were to apply fasts to those to which they are bound by vow, or by some other law, these certainly are not sufficient (5). It should be noted that when the faculty is given to change the prescribed works, any confessor can effect this (even outside of confession), as is declared in the bull of indulgences of Gregory XIII, where it is said that the term "confessor" refers to anyone approved; thus, Busemb. with Henriq. and Praepos. (6). 66. Question: 2. Whether, in the case of an invalid confession, the reservation of sins is removed, and whether one is absolved from censures? Since a confession is null and void if it is made culpably, namely sacrilegiously, it must be entirely denied, as Lugo and Viva, etc., say, whatever others may say; both because of the rule that fraud should not be supported; and more because the Pope, in the aforementioned bull, declared that one cannot enjoy the benefits unless he is prepared to gain the jubilee. But if the confession is null and void due to a lack of sorrow, but without knowledge of guilt, then Lugo, Coninch., Viva, etc., say that the reservation is removed, because in that case, the penitent has a true intention of gaining the jubilee. But notwithstanding this, Bonacina, Rodrig., Reginald., etc., deny this; and I adhere to this opinion, since Benedict XIV, in the constitution *Interpræteritos*, § 62 (Bullar. t. 3. p. 140), declared that the faculties are con- (1) More fully in book 6, chapter 536. — (2) Peyr. de privileg. reg. 4, book 3, chapter 4, note 8. — (3) Book 6, chapter 557. — (4) Note 535, line 4. Qui. — (5) Note 538, question 11 and 12. — (6) Note 534, line 15. Quando.

[*Latin ed. p. 441*]

ON INDULGENCES, etc. 429. Dispensations are granted as a preparation for the attainment of the jubilee; therefore, it is not presumed that the Pope intends that those who do not fulfill the required conditions should enjoy the benefits of the jubilee (1). 67. It is questioned: 3. Does one sin gravely who, after having been absolved from reserved penances, neglects the other prescribed works? Suarez, Vasquez, Filliucca, etc., affirm this; but Sanchinez, Lugo, Bonaventure of Castropola, Sporer, Salmanticensis, etc., commonly deny it, because in such a case, there does not appear to be any obligation present, neither from the nature of the jubilee nor from the precept of the Pope or confessor. Furthermore, as the same Pope declared, this person would not fall again into the reservation or censures (2). 68. It is questioned: 4. Can one who confesses during the jubilee and forgets the reserved penances be absolved by any confessor? It is certain that he can be absolved if the confessor expressly understands that he is absolving him from the reserved penances, having forgotten them. Otherwise, according to Bonaventure, Vasquez, Sayr, etc.; but Navarez, Sanchinez, Suarez, Viva, Croix, etc., more probably affirm that the confessor intends to grant all the

benefits that he can to his penitent. And Lessius, Castropola, Sanchinez, Sporer, Viva, etc., also say this with probability, contrary to others, concerning the commutation of vows; because, by the power of the jubilee, the penitent acquires a certain right to such a commutation. However, all agree that if one begins confession within the jubilee, he can then be absolved by the same confessor; and also from reserved penances committed after the jubilee, as Sanchez, Viva, Bossius, and others probably say (3); Suarez, Sanchinez, and Emmanuel say the same with probability (contrary to the Council) concerning the one who confesses with the intention of attaining the jubilee, and then does not attain it; because, by absolution, the reservation is completely removed, so that it does not depend on a future event (4). If, however, the penitent confesses to a superior outside the jubilee, and remembers the reserved penances, see number 140. 69. It is questioned: 5. Can one be absolved from reserved penances while sinning in reliance on the jubilee? Some deny this, and with probability, because it is not presumed that the Pope intends to foster iniquity. But others, more commonly and with greater probability, affirm this, because the faculty granted without limitation should not be limited. It is not valid to say that this fosters iniquity, by means of those remedies which prepare the way for sinners (5). 70. It is questioned: 6. By the power of the jubilee, can one be absolved from censures, having harmed another, before having made satisfaction, if there is a clause that he is not absolved unless the debt is paid? Some doctors affirm this, saying that the aforementioned clause rather implies a persuasion than a condition; but Suarez, Vasquez, Sporer, Viva, etc., deny this, and today it is certainly to be held, as declared by Benedict in the aforementioned bull. However, if the debtor were absolutely unable to make satisfaction, he can certainly be absolved; provided that he gives a promise to satisfy when he is able, as is cautioned in the same bull. If, however, he does not satisfy when he is able, some hold that he will fall again into the censures; but it is more probable that the opposite is true, according to Sanchez, Bossius, Sporer, Viva, etc. For, from chapter "Ad reprimendam," of the office of orders, a relapse into censures does not occur unless it is expressed in the law. Furthermore, the debtor will be completely released from all obligation to satisfy if the injured party remits the injury; but Croix notes this well; while Filliucca and Bonaventure are contrary to Viva and Diana, 1. that the remission of the offense by the offended monk is not sufficient, if the injury extends to the entire monastery. (a) Book 6, number 357, Question II, and see. (a) Ibid, Question III. (3) Ibid, Question IV, at the end. (4) Ibid, Question V. (5) Ibid, Question VI.

[*Latin ed. p. 442*]

430 TRACTATE XV. ON THE SACRAMENT OF PENANCE. 2. The debtor must be freed if the offended party rejects just satisfaction. 3. If the debtor cannot, at that time, satisfy without very grave damage (1); but

this must be understood according to what was said above, in Tractate 10, paragraphs 65 and 117, 71. — It is inquired 7. From which cases and censures can confessors grant absolution during the Jubilee? The common opinion, with Suarez, Layman, Vasquez, Spotorius, and others, is that the faculty granted by the Pope during the Jubilee to absolve from papal censures, should also be understood to apply to bishops; and although heretics cannot be absolved, their supporters can, as well as those who read or print books dealing with heresy, and even blasphemers of the heretical kind; thus Lugo, Sanchez, Bos, Suarez, Vasquez, Croix, and others, because such sins are not properly heresy in the formal sense (2). Public assailants of the clergy, and others specifically excommunicated or suspended, can also be absolved; but concerning the censures specifically imposed by a person, the Pope has declared that they can only be absolved for the purpose of obtaining indulgences (3). And with regard to irregularities, he stated that, setting aside the question of whether irregularities resulting from sin have the nature of a censure or penalty, dispensations can only be granted for those irregularities that are incurred because of a violation of a censure (4). 72. — Speaking of the Jubilee year, it must be especially noted that 1. at that time, all indulgences for the living are suspended; but not for the dead, nor for those who are in their final moments, as appears from the decree of Urban VIII, cited by Busembach, nor are indulgences granted by others than the Pope. It should be noted 2. that during the Jubilee year, the faculty of absolving from papal censures, and of dispensing from vows, etc., granted in order to grant a plenary indulgence, is also suspended. But the faculty granted to bishops by the Council of Trent in Session 24, chapter 6, is not suspended, nor is the faculty of dispensing from impediments to marriage, or of remitting debts, etc., which are faculties that belong to bishops by common right; thus Busembach, with Zerulo and Quintiliano (5). Busembach, with Sanchez and others, adds that the faculties granted to religious orders by their privileges to absolve from reserved matters, etc., are not suspended; but Benedict XIV, in the cited constitution, declared the opposite, saying that all faculties are suspended, both for the purpose of indulgences, and for other reasons (6). He also declared there that by the word "Incolae" are understood those who reside in the city of Rome, intending to spend the greater part of the year there. CHAPTER V. ON THE MINISTER OF THE SACRAMENT OF PENANCE. 73. — The minister of the sacrament of penance can be no one other than a priest, for the power to remit sins was given only to priests: "Receive the Holy Spirit; whose sins you remit, they are remitted; and whose sins you retain, they are retained" (John 20:22, 23). And what St. Thomas says, after being a master of sentences, namely that in necessity, a penitent should confess to whomever he can, even if it is not a priest, is understood, as other doctors explain, not as a precept, but so that such an act of humility may stir up contrition, or to receive comfort or counsel. Many, with St.

Antoninus, Panormitan, Ledesma, Sanchez, and others, say that in the hour of death, if a priest is lacking, clerics can absolve from censures, lest the sick person be deprived of burial and (t) Lib. 6. n. 537. Question VII. — (2) Ibid. Question VIII. (3) — Ibid. v. Sed hie. Doubt 1. — (4) Ibid. Doubt 2. — (5) N. 535. Response 2. — (6) N. 536. ad VI.

[*Latin ed. p. 443*]

OF ABSOLUTION, etc. 431. It lacks suffrage: but it is more probable that Lug. Laym. Castrop. Salmant., etc., deny this, because this has never been in use in the Church, especially since, according to the Rite, if an excommunicated person dies with the signs of penance, his body can be absolved by one who has the power. However, in order for a priest to validly administer this sacrament, besides the power of ordination, it is required that he have the power from the jurisdiction of the Church, and, according to the Council of Trent, the approval of the bishop. This, however, does not apply to religious; for they can confess to any priest, even one not approved, provided that their superior grants it to them: except for nuns, who, although exempt, as decreed by Gregory XV, cannot confess except to approved priests appointed by the local ordinary (1).

POINT I. ON THE APPROVAL OF CONFESSORS.

74. The necessity of approval. Examination is not necessary.

75. If approval is unjustly revoked. Can the successor revoke the examination, etc.?

76. Can a simple priest absolve from venial sins?

77. Can a parish priest take on assistants? A parish priest of another diocese?

78. A parish priest of the same diocese?

79. Who can the bishop approve?

80. Can religious be approved in one diocese?

74. APPROVAL is not already the granting of jurisdiction, but is a judgment required by the Council of Trent regarding the priest's ability to receive jurisdiction. The following should be noted:

1. Although a bishop might sin by unjustly denying approval to someone, nevertheless, without this approval, no one can hear confessions, as is clear from proposition 13 given by Alexander VII, which stated: "He satisfies the precept of annual confession who confesses to a religious, presented to a bishop, but unjustly disapproved by him." And with regard to the privileges of religious, which are opposed, the privileges of Salm. apply, because when jurisdiction is unjustly denied to them, it is not the approval that is denied, but the jurisdiction (2).

2. For approval, an examination is not necessarily required, but the

prudent judgment of the bishop regarding the priest's ability is sufficient; thus, Laym. Coninch. and Busemb. say. Salmant. also says that although a prelate might internally disapprove of someone, if he externally approves of him, this is sufficient to confer jurisdiction upon him (3).

3. It should be noted that the bishop can grant this approval even through others, for this is an act of jurisdiction, not of ordination (4).

75. It should be noted that approval can be limited as to persons, time, and place. However, if it was given absolutely, there is no doubt that the bishop would sin if he revoked it without a just cause. It remains doubtful whether such an unjust revocation would be not only illicit, but also invalid? Some deny this, but Suar. Lugo, Castrop. Conc. Salm., etc., affirm, saying that without a just cause, a confessor cannot be deprived of his right that he has already acquired (5).

Furthermore, Lugo rightly points out that in doubt, the revocation should be presumed to be just; and with this premise, the aforementioned opinion can hardly be put into practice, since there may be many reasons for the bishop to revoke the approval that are unknown to the confessor (5).

76. It should be noted that the bishop can, for a just cause, revoke the examination of all approved confessors by his predecessor, even parish priests, provided there is a strong suspicion of their incompetence, as decreed by the Holy See on January 15, 1667 (6); and also mendicants, as Suar. and Lugo rightly say (contrary to some); and on this point, Cabass. refers to Alexander VII, January 30 (1).

(1) Lib. 6. n. 539 et seq.

(2) N. 546.

(3) N. 545.

(4) N. 550. v. 3. Episc.

(5) N. 551.

(6) Apud Lambert. Notif. 9. n. 16.

[*Latin ed. p. 444*]

432 TRACT. XVI. ON THE SACRAMENT OF PENANCE. 1656; In the case of the Bishop of Andegav, which was debated with various religious orders, it was decided that this proposition was erroneous: "The Bishop cannot limit, or restrict, the permissions granted to religious orders for hearing confessions, nor can he revoke any of them." Furthermore, it was decided in the Council of France that the Bishop is not required to give an account of the revocation of permissions (1). It should also be noted that St. Pius V., in the Roman pontifical, stated that religious orders approved by a predecessor Bishop can be examined anew by a succeeding Bishop, and if they are found to be unsuitable, they can be disapproved. Many authors, such as Sylvester Mirand, Fagund, Cespida, Nicolius, and

others cited by Ferraris, argue that a vicarious capitular cannot remove the faculty granted to religious orders by the Bishop, nor can he call them for examination, unless the approval given by the Bishop was with the clause: "At our pleasure"; in which case, it expires with the death of the Bishop. Now, four doubts remain to be discussed.

76. — Doubt 1: Are confessions of venial sins made to a simple priest illicit and invalid? It cannot be doubted today that they are illicit after the decree of Innocent XI, cited by Bonaventure (2), on February 12, 1679, in which not only was the precept given to Bishops: "Do not allow confessions of venial sins to be made to a priest not approved by the Bishop"; but furthermore, it was forbidden to the priests themselves, as it is stated there: "If any priests act otherwise, let them know that they will give an account to God." Therefore, the doubt remains whether such confessions are also invalid? The most common opinion is that they are not; but since it is very likely that simple priests do not directly possess such a faculty from Jesus Christ (as others say), but from the Church, as held by Suarez, Lugo, Bonaventure, the Council of Roncaglia, etc., I believe it is very likely that, after the decree of Innocent XI, such confessions are also null and void today; for it is not presumed that the Church intends to confer jurisdiction on those to whom it expressly prohibits the use of such jurisdiction (3).

77. — Doubt 2: Can a parish priest enlist the services of another parish priest to hear confessions in his church? Castrop, Suarez, Vasquez, Lugo, Wigandt, the Council of Bonaventure, etc., affirm this, saying that a parish priest is approved for the entire Church when he is appointed to the parish, as stated by the Council of Trent (Session 23, chapter 15): "No one can hear confessions, nor can be considered suitable for it, unless he holds a parish benefice, or has obtained approval from the Bishops." From this, they infer that every parish priest receives a universal approval for the entire Church. However, it is more likely that this is denied by Layman, Barbos, Piasec, Garc, Croix, etc., with Lamb (4); for the words cited do not indicate that the Council gave parish priests a universal approval, but rather that it declared that every parish priest, once appointed to a parish, remains approved without further approval by the Council's disposition: not by the Church, and for the entire Church, but by his own Bishop, and according to his will, to hear the confessions of his flock. Furthermore, there are several declarations from the Sacred Congregation (5) on this matter. It should be noted here that a parish priest who has relinquished his cure cannot hear confessions without special approval from the Bishop (6).

78. — Doubt 3. (1) Lib. 6. n. 55s. — (2) Bonaventure, vol. x. d. 5. q. 7. p. 8. — (3) No. 543, v. Quær. — (4) Notification 96. n. 7. — (5) Lib. 6. no. 544. This is doubt 1. — (6) No. 544, v. 2. Also.

[*Latin ed. p. 445*]

OF SATISFACTION, etc. 433, of another parish, but within the same

diocese? Commonly, they affirm this, besides the aforementioned doctors Castrop, Croix, and Mazzotta. But it is probable that Barbosa, with Piasec, in *Homo Apostolicus*, and with another declaration of the Sacred Congregation, deny this. The reason is that it is more probable that the parish priest is not approved by the universal Church, but, as stated, by his own bishop, and according to his will; and whenever it is not known whether the bishop intended to approve him for the entire diocese, he cannot hear confessions, except within his own parish; while it is easily possible that the bishop, judging it suitable for one place and not for another, namely, for a town and not for a city. However, Bonac. *Clericus* and Lambert rightly say that the opposite opinion can be practiced where custom so dictates; indeed, Wigandt absolutely admits this, because he says that such a custom exists in many dioceses. 79. — It is doubted 4. From which bishop must the approval be obtained? Under the name of bishop, any other prelate who enjoys episcopal jurisdiction is included, as is the case with some abbots, and with chapters when the seats are vacant. It also includes a confirmed bishop, even if not consecrated, but not one who is merely elected, or if he has renounced the episcopate, Lug. Salm. and Croix (2). But what is more important is to know who is understood by "bishop proper," from whom the approval must be obtained. Some understand the ordinary of the penitent, others the ordinary of the priest; but today (whatever Mazz. may say), it is undoubtedly to be understood as the ordinary of the place where the confessions are heard, according to the bull, *Cum sicut*, of Innocent XII, April 19, 1700, extensively cited by Salmant. (3), (and confirmed by Benedict XIV in the Apostolic Bull), in which it was declared that confessors cannot hear the confessions of lay people in virtue of the bull *Cruciata* without the approval of the local ordinary; otherwise (it says), the confessions are invalid, and the ordinaries are suspended; and it concludes with these words, rejecting as false and rash any opinion to the contrary. Nevertheless, Father Mazzotta contends that the former opinion is not improbable, namely, that the ordinary of the penitent is also meant, saying that the bull of Innocent XII should probably be understood only for those confessors who absolve against the will of their own ordinaries. But I do not know how this interpretation can be valid, since the bull expressly states that there are no confessions that are made without the approval of the ordinary of the place in which the penitents reside. And if this applies to those who enjoy the privilege of *Cruciata*, it certainly applies even more to those who do not enjoy that privilege; and with me agree Ronc. and Salm., who, after the bull of Innocent XII, recalled what they had previously taught in their treatise on Penance (4). However, Salm. says that this applies to those who have been granted the privilege of *Cruciata*, but not to those who have been granted a jubilee, or the like; but Benedict XIV, in another bull, *Benedictus Deus*, dated December 25, 1750, § 4, declared that even during a jubilee, lay people cannot choose a confessor other than one

approved by the local ordinary, and nuns cannot choose one other than one approved for nuns (5). It should be noted that it is very probable, according to Croix and Salm. (who hold this opinion as common), that a parish priest can hear the confessions of his parishioners anywhere. And regarding this, there is a declaration of the Sacred Congregation (6). 80. — As for religious, before Innocent XII, Innocent X had declared (1) *Notificatio*, 86, n. 13. — (2) *Lib.* 6, n. 547. — (3) *Tractatus*, 18, on Privileges, c. 4, n. 80. — (4) *Lib.* 6, n. 548, v. Third opinion. — (5) *Ibid.* — (6) N. 549, v. Question 28.

[*Latin ed. p. 446*]

434 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. his brief (1), regular canons, even those exempt, who desire to hear confessions of the laity, must be approved by the ordinary of the place: "Regular canons in one diocese are not permitted to hear confessions in another, without the approval of the bishop of that diocese," are the words of the brief, which was subsequently confirmed by Innocent XIII in the Apostolic Constitution, and then in another brief by Benedict XIII (2). POINT II. ON THE JURISDICTION OF THE CONFESSOR. 81. Who has ordinary jurisdiction, and who has delegated jurisdiction. — 82. Does delegated jurisdiction cease with death, etc.? If it is held by a prince or for the sake of legal proceedings. — 83. On presumed consent of the bishop. — 84. Who can absolve with doubtful jurisdiction. — 85. Who can choose a confessor. — 86. Anyone can confess to an approved confessor. — 87. To whom can strangers confess? — 88. To whom can religious confess? — 89. To whom can nuns confess? — 90. On the color of title and on common error. — 91. On probable jurisdiction. — 92. Can excommunicated persons, etc., absolve the dying? — 93. Can simple priests absolve before approved confessors? — 94. Exceptional cases. — 95. On a confessor who is an accomplice in a grave sin. — 96. Can simple priests absolve before a superior confessor? — 97. On papal dispensations. — 98. Is a dying person obliged to request permission from a superior through a letter? 81. — IT HAS BEEN SAID that there is another power of order, which every priest receives from Jesus Christ when he is initiated into the priesthood, for the absolution of sins; the other is the power of jurisdiction which is conferred upon him by the Church, so that he may exercise the power of order towards his subjects, over whom the Church grants him authority. This latter power of jurisdiction is either ordinary or delegated. Ordinary jurisdiction is that which all pastors possess, such as the Pope, bishops, archbishops (when they visit the subjects of their suffragans), parish priests, and superiors of religious orders. Some authors have doubted whether vicars general of bishops have ordinary jurisdiction in the sacramental forum, so that they can receive confessions and grant others the power to do so, saying that their power is only in matters of the external forum. But the common and truer opinion, as held by Fagnan,

Hostien, Navar, Azor, Silv, Sanch, Bos, Salm, and others, is that vicars have such jurisdiction, not already from the bishop, but from the canon, or from the law, since they constitute a tribunal with the bishops, as appears from chapter 2 of the Customs, in 6, and from chapter Romana, on appeals, in 6 (3). Delegated jurisdiction is that which is granted by those who have ordinary jurisdiction, such as the Pope, who can grant it for the entire Church, bishops for their diocese, superiors for their orders, and parish priests for their parishes. The Pope can delegate the power to act against the consent of bishops and other superiors, and bishops and superiors can act against the consent of parish priests and inferior superiors, but not the other way around (4). 82. — NOTE 1. External jurisdiction is terminated by the death of the grantor, but not internal jurisdiction, as Busemb says, along with others; but Sanch and Salm distinguish better, saying that this applies when the delegation is general (whether it is from the Pope or from a bishop); otherwise, when it is particular, for a particular case or person (5). NOTE 2. The delegate cannot delegate further, unless it has been expressly granted to him. Exception 1. If someone was delegated by a prince; but this is understood, as explained by Laym. (1) Ap. Salm. tr. 6. de Penit. c. 11. n. 93. — (2) Lib. 6. n. 549. — (3) N. 557 and 558. — (4) Ibid. v. Delegata. — (5) N. 569.

[*Latin ed. p. 447*]

OF THE JURISDICTION OF THE CONFESSOR. 433 and Castrop. (1), when such a delegation is made to someone for the sake of office, and not when a person is chosen because of their expertise, or when a particular case is assigned to them. 2. If someone is delegated to a university of cases, even if not by the prince; but in this matter, it is also necessary to distinguish, as Laym. (2) states, in two ways in which someone can be delegated jurisdiction over a university of cases: first, when some office is entrusted to them to which jurisdiction is attached, and this is true even if the office is not their own, but that of a vicar, e.g., a vice-parish priest, or a vice-rector, in place of an absent parish priest, or one who is not yet a priest. Such a vicar can certainly delegate his jurisdiction, not entirely, but for one or another case, as the doctors commonly say, because to him has been entrusted not only the exercise of the parish office, but also the office to which not only the sole use belongs, but also the delegation of jurisdiction; thus Laym., Castrop., Sanch., Coninch., Silv., and others, with St. Thomas (3), who says: "A vicar cannot communicate his entire power, but he can part of it." Secondly, when jurisdiction is delegated to someone, not as an office, but as a privilege permanently attached to their office, or annexed to their jurisdiction, because then such jurisdiction is considered ordinary, as is stated in cap. 6. It is permissible, granted to bishops by the Council of Trent, session 24. However, Rodriguez, Beja, and Viva, with Navar., Peirin., Naldo, Bord., etc., state that if a bishop grants a confessor the power to

absolve from all reserves, he could delegate such power to another in a particular case; but Laym. and Castrop., with Coninch., admit this only if such power is granted because of the office, e.g., a parish priest, or a vice-parish priest, as stated above, and not if it is granted to someone because of their expertise or piety; for the power to delegate belongs only to him to whom the office is entrusted, and not to him to whom only the use of exercising jurisdiction is entrusted (4). 83.—Note 3. It is not sufficient to administer the sacrament of penance with the internal consent of the bishop, nor with a presumed consent for the future, whether it is a ratification, namely, that if he knew, he would certainly consent; because such an interpretative will is not sufficient to confer jurisdiction for the present time. But it is sufficient against a presumed consent for the present, which is made manifest by external signs, as if someone, in the presence of the bishop, and without contradiction, were to hear confessions (5). 84.—Note 4. It is sinful for a priest to absolve under a doubtful jurisdiction. But exceptions are made for cases in which some necessity arises, as they say (Elbel, Busemb., Holzm., etc.): 1. if there is a danger of death. 2. If the penitent is required to fulfill the precept of annual confession, and there is no confessor present who has certain jurisdiction. 3. If the penitent is required to celebrate Mass, or to receive Holy Communion, and otherwise would incur a stigma of infamy; or, they add (Salm.), if the priest is obligated to celebrate Mass that day. But in this matter, it must be noted that it was stated in the preceding section, no. 34, that if someone is certain of a mortal sin, and is not certain of contrition, in such a case, receiving a doubtful absolution, he cannot receive Holy Communion; for then he would possess the precept to prove himself, which implies a certain absolution, not a doubtful one. Furthermore, in the cases mentioned, the cited authors state that a confessor can give a conditional absolution, if he can. Suar., Conc. Reg., and Busemb. expe- (1) Laym. de Penit. c. 10. n. 14. et Castr. cod. lit. d. un. p. 13. n. 15. — (2) I. oco cit. n. 12. v. Duobus. — (3) Quodlib. 12. a. 31. — (4) Lib. 6. n. 56. — (5) N. 570.

[*Latin ed. p. 448*]

436. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. It must be understood that the penitent should accuse himself of some venial sin, so that he may be directly absolved from it, and indirectly from others (1). 85.—It should be noted that 5. persons may choose a confessor according to their privileges, namely: 1. Kings and princes (specifically those who enjoy supreme dominion). 2. Domestic officials of the Pope (2). 3. Bishops, even if they are titular, as Busemb says. But it must be noted here, from chapter end concerning Penance, that both bishops and superiors of regular orders, and also lesser prelates who are exempt, have been able to choose any priest as their confessor; nevertheless, as Fagnan reports, the Sacred Congregation declared that bishops can confess only to priests approved by the ordinary

of their diocese, as explained by Cardinal de Lugo, and this was confirmed by Gregory XIII on December 1, 1532, as reported by Fagnan and Pitton (3). However, it is permitted for bishops to keep an approved confessor with them, and to confess to him even in another diocese. The same applies to cardinals, who, in addition, when residing in Rome, can choose a confessor for themselves and their family, and bring him with them wherever they go. As for parish priests, Alexander VII condemned proposition 16, which stated that they could confess to any priest (4). Generally speaking, some authors have said that someone can confess to a simple priest if the approved priest is ignorant, or if there is a risk of serious harm if he were to confess to the approved priest, or if the approved priest does not wish to hear his confession; but all these opinions are commonly refuted (5). It should also be noted here that chaplains of armies cannot absolve soldiers who are stationed there without the permission of the Pope, or without the license of the ordinary, as the Sacred Congregation has declared on several occasions (6). 86.—It should be noted that today it is certain (whatever may have been the practice formerly) that any secular person is permitted to confess to any approved confessor, even against the will of the parish priest, and even for the purpose of fulfilling the precept of annual confession. It does not invalidate what John Launoius said, that confession required by the Council of Trent, in chapter "Omnis" of the decree on Penance and Remission, must be made to one's own parish priest, since it is said there, "let him confess to his own priest": for as Clement VIII and Clement X declared in the bull "Suprema" (7), by "his own priest" is meant any approved confessor; and John XXII, in the extrajudicial decree "Vas electionis," condemned John Poliacus, who taught that no confessions were valid unless made to one's own parish priest (8). 87.—It should also be noted that today, among the doctors, it is certain and commonly held, as taught by Castrop, Vasquez, Suarez, the Council of Trent, Lugo, Bonaventure, Salm, etc., that pilgrims, by the connivance of bishops, or rather by universal custom, can confess to any approved confessor in the place where they are found; and this custom applies even if the pilgrim departs from his homeland with the intention of confessing elsewhere, as say Pontius, Fill, Renzi, Tamburrini, Mazzola, etc. (9): Clement X forbade, solely, departing for another diocese in order to defraud the reservation, as mentioned in chapter 7, paragraphs 135 and 136. 88.—It should be noted that religious persons cannot confess to other priests outside their own order without the permission of their superiors, due to the privilege enjoyed by the orders, granted by Innocent IV and other popes, and most recently granted by Benedict XIV, by the brief "Quod communi" on March 30 (1).

[*Latin ed. p. 449*]

OF THE JURISDICTION OF THE CONFESSOR. 437 In the year 1742, the Capuchins, by the rules of their order, were forbidden to hear the con-

fessions of others; but these are only permitted to hear confessions if approved by the local ordinaries, or by superiors of their order. However, speaking of religious who are traveling, it should be noted that if they have a fellow member of their order, and that member is suitable, they must hear the confessions of that member. If, however, the member dies, or another suitable priest of their order is not available, they can hear the confessions of any suitable regular or secular priest. This is the common opinion of Laym, Roncaglia, Salmeron, Tamburini, Croix, and others, and it is certain from the words of Innocent VIII, which will be quoted shortly. It is doubtful whether they should hear the confessions of a priest who has been approved. Wigandt, Conc. Antoine, and a few others hold this view; but the most common and truer opinion is the opposite, which denies this, as stated by Suarrez, Escobar, Castro, Roncaglia, Bordon, Salmanton, Mazzola, Rodriguez, Tamburini, and others (with the exception of the Capuchins, who, as mentioned earlier, are required by the bull of Benedict XIV to hear the confessions of those who have been approved). This is clearly demonstrated by the concessions of Sixtus IV, and more clearly by Innocent VIII, who says: "Therefore, to those brothers who are sent out on journeys, and who are sent by their superiors, if they cannot have a suitable priest from among the professors of their order, they may choose any suitable religious or secular priest who may lawfully hear their confessions." Salmeron, with St. Antoninus, Soto, and Sylvaticus, rightly say that "any other priest" means any simple priest who is suitable; for this is also presumed to be the intention of the prelates when they grant their subordinates permission to travel, according to common custom (1). However, Busembach notes that this should be understood to mean those who are not reserved (2). 89. Regarding the confessions of nuns, several things should be noted. I. Nuns require a special appointment, or at least the approval of the local bishop, even though nuns are exempt and subject to their own rules, as stated in the bull of Gregory XV, *Inscrutabilis*, and in the bull of Innocent XIII, *Apostolici*, both confirmed by Benedict XIII in the bull *Pastoralis*; and this applies even to the hearing of confessions of venial sins, as declared by the Holy See. If a confessor has been suspended for three years, he remains suspended unless permission is granted by the Holy See, as also declared by the Holy See; and this also applies to confessors of convents. If, however, a confessor was appointed as a substitute, P. de Alex. and others say that it is probable that he can be confirmed for another three years; because this prohibition, as it is odious, must be strictly observed in the case of an ordinary appointment. The aforementioned author also notes that in some places, due to a lack of suitable confessors, bishops allow them to continue beyond three years to hear the confessions of the nuns. Bordone also notes that nuns may lawfully reject a designated confessor if there is a just reason, for example, if the confessor is too strict, or if he is an enemy of his own relatives, etc. III. According to various decrees of the Holy

See, as stated by P. de Alex., the following cannot be confessors of nuns: 1. vicars general; 2. parish priests, if it would cause a notable detriment; 3. regulars; 4. canons penitentiaries. However, the aforementioned author, P. de Alex., says that it is permissible for bishops to appoint them if they deem it expedient. IV. Bishops and superiors of religious orders are required to provide extraordinary confessors to the nuns subject to them twice or three times a year, as especially stated by Innocent XIII in the bull *Apostolici ministerii*, extended by Benedict XIII to the entire Christian world, and as most recently confirmed by Benedict XIV in the bull *Pastoralis*.

(1) Lib. 6, n. 575.

(2) N. 574, at the end.

[*Latin ed. p. 450*]

438 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. Rome, August 5, 1748. Busemb argues with the nuns of Quintanad that, if an extraordinary confessor is not available to them, they can choose a confessor; and he cites a certain declaration of the Holy See found in Barbos. However, this opinion is rightly rejected by Father de Alex., especially since the aforementioned Benedict has declared in the aforementioned bull that nuns, both cloistered and those in convents, if they do not have an extraordinary confessor, can appeal to a major penitentiary, who must assign one to them. Furthermore, the aforementioned Pastoral Bull stipulates that every nun, even if she does not wish to confess, must present herself to the extraordinary confessor. Moreover, it is stipulated therein that, in articulo mortis, every nun should be granted a particular confessor, if she requests it; and if the monastery is exempt, and the regular prelate does not grant it, the bishop must assign one; and if the bishop does not appoint one, recourse must be had to the major penitentiary. Furthermore, it is stipulated that if any nun refuses to confess to the ordinary confessor, the bishop shall appoint another for a certain number of times (and here the Pope urges the bishops not to be difficult in granting these extraordinary confessors to those who request them). And if the monastery is exempt, it shall be appointed by the regular prelate; and if he refuses, it shall be granted by the bishop, and if the bishop is negligent, it shall be granted by the major penitentiary. Finally, it is stipulated that regular prelates shall assign an extraordinary confessor to the nuns subject to them twice or three times a year, chosen from those approved by the bishop for nuns, who (note) must be either secular or of another order at least once; otherwise, the bishop shall choose one. And the Pope commands that at that time, it shall be absolutely forbidden for the ordinary to hear the confessions of anyone, not even the abbess, or novices.

90. Many doubts now remain to be discussed. The question is asked: 1. Does the Church supply the jurisdiction that is lacking in the case of a common error? It is asked whether, in the case of a common error, the

Church supplies the jurisdiction that is lacking in the absence of a confessor. If the common error is accompanied by a colorable title, or a presumed title, it is certain among all that the Church supplies: so say Soto, Navar, Cajetan, Sanch, Cardinal Concini, Antoine, etc., and it is proven by the law of Barbarius, in the books on the Office of the Praetor, and by chapter Infamis 3, question 7. The reason is that otherwise many souls would perish, and therefore it is reasonably presumed that the Church supplies; however, Sanch notes that this does not apply when the title is fictitious, but when it is truly conferred by a superior, even if it is only presumed, because perhaps the superior is forbidden to confer it, as is said in Novella 44, chapter 1, Auth. de Tabell. But a greater doubt is whether the Church supplies the jurisdiction when only a common error intervenes, without a colorable title? Bus, Conc, Ronc, Sporer, Holzm, etc., deny this, arguing that otherwise impious priests would have an opportunity to pretend to be confessors and spread errors. But this reason is not convincing, because even if the Church denied these priests jurisdiction, it would not prevent harm; therefore, it is probably affirmed by Lug, Less, Ronc, Castrop, Sanch, etc., and it is probable that Ronc, Spor, and Holzm, with Cardinal Viva and Henry Elbel, agree, because the same reason of the common good, which is given for a colorable title, also applies to a common error.

91. The question is asked: 2. Is it permissible for a confessor to absolve with probable jurisdiction? Here there are three opinions. The first is that of a few, namely Eliz, Conc, and Antoine, who absolutely deny it. These say that, according to proposition I, prohibited by Innocent XI, it is not permissible to use a probable opinion in the sacraments (1) Book 6, n. 576 and seq. — (2) N. 572.

[*Latin ed. p. 451*]

ON THE JURISDICTION OF THE CONFESSOR. 439. Regarding those who are to be absolved. The second opinion, which is commonly held and agrees with that of Lessius, is that of Cardinals Lugo, Sanchis, Bonaventure, Castr, Salmanticenses, Viva, Croix, etc.: they call it "certain" moral jurisdiction. Sanchis, Cardenas, Dicast, Tamb, and Gormaz, among others, assign a reason for this common error, but this does not prove it; the true reason is the universal custom that exists in the Church regarding absolution with probable jurisdiction, as attested by the aforementioned authors; and custom, indeed, confers jurisdiction, as also taught by Suar, Barbos, Carden, Quaranta, and Pelliz. This is clearly demonstrated in chapter "Contingat," concerning competent jurisdiction, where it is stated: "Unless, perhaps, those who are confessing themselves are themselves deserving of [such absolution], by reason of an indulgence or a special custom (note), so that they may claim such jurisdiction for themselves." The objection raised by the condemned proposition does not apply here, for (as Viva and Wig with Gonet rightly point out), the proposition speaks of opinions concern-

ing matters in which the Church has no power, such as the matter and form of the sacraments; but concerning jurisdiction, the Church can indeed supplement it, and it is certainly presumed to do so for the good of souls. Therefore, in such a case, the confessor does not absolve with probable certainty, but with certain jurisdiction. Finally, a third opinion, which we follow along with Suar, March, Gobat, Wig, Holzm, Barb, Spor, Elbel, and others, states that it is only permissible to absolve someone with probable certainty when there is some grave and reasonable cause; otherwise, one should not presume that the Church intends to grant undue freedom to confessors. Such a reasonable cause would be: 1. if the penitent especially needs the help of that confessor. 2. If the complex of sins is known to the confessor who has certain jurisdiction. 3. If there is otherwise a danger of making a sacrilegious confession. 4. If the penitent fears incurring an aversion or harmful suspicion if he confesses to a confessor who has certain jurisdiction; or if, for other reasons, he must abstain from confession for a longer period. 5. If the precept of annual confession or the opportunity to gain special indulgences is pressing (1). I add that if the penitent has already revealed some grave sin to the confessor, and there is doubt as to whether it is reserved, as will be explained in number 142. 92. — Question 3: Can all simple priests absolve in articulo mortis, even heretics, schismatics, or excommunicated individuals for the avoidance of danger? It has already been established that in death, all priests, even those who have been degraded, can absolve from any reserved sin and censure. And this applies not only in articulo mortis, but also in mortal danger, as the most common and truer opinion holds; thus, Nav, Silv, Suar, Sanch, Lugo, Castrop, Salm, etc., against Soto and Canus; for in this matter, the situation is the same in articulo and in mortal danger, as is evident from chapter "Si quis suadente," 29, reason 17, question 4, where it is stated: "No bishop should presume to absolve him, unless there is an urgent danger of death." The reason is that every faithful person is equally bound to confess in articulo mortis as in mortal danger. Such a danger is judged to exist in battle, on a long voyage, during difficult childbirth, and in any dangerous illness; thus, Sanchis and Salmanticenses, who say the same of anyone who is in a probable danger of going insane, or who is a captive among the Turks, and fears that no priest will come to him so that he can confess (2). But let us return to the question of whether priests who are separated from the Church, such as heretics, schismatics, and excommunicated individuals for the avoidance of danger, can absolve the dying? They affirm (1) Lib. 6. n. 573. — (2) N. 561.

[*Latin ed. p. 452*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE: Suarez, Navar, Lugo, Salm, and others maintain that, according to the Council of Trent, Session 14, Chapter 7, which states: "It has always been the practice in the

Church of God that there be no reservation in articulo mortis; and therefore, all priests can absolve any penitent from any sins and censures." However, Fagnan, Petroc, Concina, and others deny this, citing a declaration from the Sacred Congregation. St. Thomas (1) supports this view, stating that, when speaking of those excommunicated from the communion of the Church, only those in the article of death can be baptized, but no other sacrament can be administered. The Council does not contradict this, for, as they argue, it does not establish a new law, but only declares an ancient right, as it states: "It has always been the practice in the Church of God." Fagnan, as well as the Sacred Congregation, declared that, as previously stated, Navar admits that, formerly, the common opinion was that of St. Thomas, Scotus, St. Antoninus, Ricard, and Turrecremata, who held that excommunicated individuals could, in no case, be absolved (2). However, Father Lucius Ferraris, in his Bibliotheca, under the word "Moribundus," number 32, notes that Father Francis Campioni, in his Instruction to confessors, chapter 41, number 12, cites Cardinal Albitio, part 1, on Inconstancy in Faith, chapters 13 and 19, stating that the aforementioned declaration of the Sacred Congregation, cited by Fagnan, is not found in the records of the Council; this suggests that it either did not originate there, or was removed, as it contradicted the common opinion, due to the same bishop to whom an affirmative response was given regarding Fagnan's doctrine; however, when a doubt was presented to Innocent XI, he ordered the question to be suppressed, and that it should no longer be doubted that a dying person can be validly and lawfully absolved from excommunication, degradation, or heresy, in the absence of another priest.

QUESTION 4. Can a simple priest absolve a dying person without the approval of an examiner? The most common opinion denies this, according to Molin, Suarez, Azor, Bon, Cardinal Lugo, Laym, Salm, and others, and it is supported by the Council of Trent, l.c., where it is stated: "However, so that no one may perish on this account, it has always been the practice in the Church of God," and the other words previously mentioned follow. From this passage, it is inferred that 1. the Council did not establish a new law, but declared an ancient one; and the ancient law was that simple priests could only absolve the dying when an examiner was absent, according to the texts cited by the authors. 2. That the Church grants this power to simple priests only to the extent that there is extreme necessity, so that no one may perish; but this reason ceases when an examiner is present. In opposition, Navar, Barbos, Sayr, and others affirm, and Lugo, Viva, and Sporer are considered probable, stating that the words of the Council are general: "And therefore, all priests can absolve any penitent from any sins and censures." They argue that the ancient canons do not speak of sacramental absolution, but only of the reconciliation of public sinners. Nevertheless, I judge that one should not depart from the opposing opinion; 1. because in the Roman Ritual (on Penance, at the beginning),

it is expressly declared: "But if the danger of death is imminent, and an examiner is absent, any priest can absolve." And it is certain that the Ritual declares an ancient practice of the Church, as Paul V states in his bull, where he commands that the Ritual be inviolably observed, since it contains those things which the Catholic Church has established and approved as ancient practices. 2. Because the aforementioned words of the Council, "and therefore, etc.," as Fagnan, Petroc, and others (1) state in 2nd part, question 82, article 7, number 2. (2) Book 6, number 560.

[*Latin ed. p. 453*]

ON THE JURISDICTION OF THE CONFESSOR. 441 The author in *De Officio Confessarii* at Croix does not refer to all priests, but to those endowed with jurisdiction, either ordinary or delegated, as the Council states in the aforementioned chapter 7; all the more so because at the end of that chapter, he adds: "Outside of this article," priests, since they can do nothing in reserved cases, "strive to persuade [the penitent] to go to superiors for the benefit of absolution." The passage refers to simple confessors (of whom it states that they can do nothing in reserved cases), not to a simple priest; and thus, the Sacred Congregation declared, as Fagnan reports. We say that even simple priests can absolve in cases of imminent death, when a confessor with jurisdiction is lacking, is not derived from the Council of Trent, but from other canons and the common custom of the Church (1). 94. — However, it is likely that the Doctors of the First Opinion agree that a simple priest can also absolve, even in the presence of a confessor with jurisdiction, in the following cases: 1. if the confessor with jurisdiction is unable or unwilling to absolve. 2. If the confessor with jurisdiction is explicitly excommunicated or suspended. 3. If the confessor with jurisdiction is only valid in another diocese. 4. If the dying person so fears confessing to the confessor with jurisdiction that they would be in danger of sacrilege in confessing, as Croix and Mazzot state, citing St. Thomas. And Sporer believes that the same applies if the sick person could not confess to the confessor with jurisdiction without great difficulty or discomfort, or if they believed that a simple confessor would be more helpful to them. 5. If the confession has already begun with the simple confessor, because in that case, the simple confessor has already acquired jurisdiction; otherwise, if the sick person has already been absolved (provided that there is no circumstance of a sin already confessed); and also otherwise, if the sick person is subject to some reserved excommunication, because in that case, even if the confession has begun with the simple confessor, in the presence of a superior, the sick person must first be absolved from the excommunication by the superior, and then complete the confession with the simple confessor. 6. If the confessor with jurisdiction has been complexed in a grievous sin by the penitent, as declared by Benedict XIV (2). But on this point, a more detailed distinction is necessary. 95. — The aforementioned Pope, in

two bulls (one beginning with *Sacramentum*, and the other with *Apostolici*), stated that a confessor is deprived of all jurisdiction with regard to a penitent complexed in a grievous sin against the sixth commandment, and incurs a papal excommunication if he dares to hear that confession. He only allows the confession in cases of extreme necessity of death, in which he permits the confessor to absolve the penitent; provided that another priest is lacking, even a simple one, who can absolve the sick person; or provided that the priest cannot hear the confession of the sick person without grave scandal and infamy to the confessor with jurisdiction. However, the Pope adds that he (if he can) is obligated to remove such a danger of scandal or infamy, under penalty of the same excommunication, although if he does not remove it, the absolution would still be valid (3). Regarding these bulls, it should be noted that the term "grievous sin against the sixth commandment" should not only be understood to mean the consummation of the sin of fornication, etc., but also acts that are mortal, such as touching and obscene conversation, whenever they are mortal. Thus, Salm. (4) states. On the other hand, venial sins are not included, whether they are so because of the smallness of the matter, or because of a lack of deliberation; thus, Salm. ibid. n. 277. He also correctly states, n. 278, that internal sins, or those not fully externally manifested, are not included, because the act itself must... (1. Lib. 6. n. 562. — (2) N. 563. — (3) Ibid. v. Probably at the end and more fully n. 553. — (4) Append. de Bulla Cruc. cap. 6. p. 169. ex n. 262.

[*Latin ed. p. 454*]

442. TRACTATE XVI, ON THE SACRAMENT OF PENANCE. It must be externally grave. Mortal doubts of fact or law are not included (St. Thomas, ibid., n. 280; see what will be said here below, n. 142), nor does it concern whether the penitent himself has also gravely sinned, because the bulla refers to a formal accomplice in a detertable mortal sin (St. Thomas, cited, nos. 280 and 241). It should be noted that an absolution given by a confessar who is an accomplice is invalid, even with regard to other sins, if the penitent has not yet been absolved from that detestable sin by another; otherwise, if he had already been absolved by another. These two points seem certain. But two doubts arise: Does the confessar incur excommunication who, although he does not absolve, only hears his accomplice in confession and pretends to absolve? I was formerly of the opinion that he did, based on a certain response from the Sacred Penitentiary; but later, after reading the bulla *Inter præteritos* of the same pontiff, I found the opposite declared, where it is said: "Not less, a confessar who is an accomplice, who either outside of the article of death hears the confession of a penitent, and absolves him; or absolves him in the article of death, when another priest is absent, is subject to a greater excommunication by us." The second doubt is whether a bishop, by virtue of chapter 6 *Liceat* and session 24 of the Council of Trent, can absolve a confessar who absolves his accomplice in

a detestable sin. See what will be said below, treatise 20, n. 237 (1). 96. — It is asked whether, in the presence of a superior, any approved confessar can absolve a sick person from sins and censures reserved? The answer is given by distinguishing: As for sins, he certainly can, because in death all reservation ceases, as the Council declared, so that rightly Suar., Salm., Pallud., Navar., Granad., and others say that nothing remains for the one absolved from reserved sins, if he recovers, except the obligation to present himself to the superior (but this does not apply if the penitent is absolved out of some necessity, not of death) (2). Furthermore, Suar., Lugo, Sanch., Salm., and others say that if the sick person has reserved sins, and an approved confessar is present, a simple priest cannot absolve him, even if that confessar has the faculty over reserved sins; because, as stated above, all reservation ceases in the article of death. As for reserved censures, a simple confessar cannot absolve the sick person before the superior, because it is certain that, if he recovers, the superior must be visited, not in order to be absolved again, but in order to show his obedience, and to receive a greater penance, if the superior imposes it upon him; otherwise, if he does not present himself, he falls under the same censure, as taught by Suar., Sanch., Salm., and others, from chapter *Eos qui* of the Decretals on excommunications, in 6. Hence, if the superior is present, the sick person must be absolved from censures by him (3). 97. — It is asked whether, in the presence of a bishop, any confessar can absolve a dying person from papal censures? Some doctors distinguish, as Mol., Suar., and Sanch., and say that he cannot, if the case is hidden, because then the bishop proceeds in the ordinary jurisdiction over him, according to chapter 6 *Liceat*; and they say the same about the public offense of a cleric, according to the heading *Ea noscitur* in the Decretals on excommunications, where it is said that, for such an excommunication, if the pontiff cannot be reached, the bishop must be approached. On the contrary, some affirm that a simple confessar can absolve, even in the presence of a bishop, if the case is public (understand, except for the offense of a cleric), because then the simple confessar and the bishop are equally endowed with the faculty. But this second opinion is commonly denied by Navar., Castrop., Coninch., Avil., Sayr., and Corn. (1) Lib. 6, nos. 554, 555, and 556. (2) No. 561. (3) No. 563. Doubt 1, and no. 567.

[*Latin ed. p. 455*]

ON THE OFFICE OF THE CONFESSOR. 443 Hurtad, Salm., etc., say that the aforementioned text in chapter *Ea noscitur* applies not only to public censure imposed by a cleric, but also to any papal censure, since the same principle applies to both; and as we demonstrated in the preceding question, censures cannot be absolved by a superior. But notwithstanding this, I do not consider the first opinion to be improbable, since it is not certain that the aforementioned text extends to all censures (1). 98. – It is

questioned whether a confessor can absolve a dying man from papal censures, if he could obtain the power to do so by letters from the bishop? Lugo, Bonac., Suar., Croix, etc., deny this; but Azor, Castr., Sanch., Valenza, Conc., Carden., Spor., Salm., Viva, etc., more commonly and probably affirm it, both because there may be a danger in seeking such power by letters, and because in chapter *Quamvis, de Sent.* it is said that anyone is considered impeded from approaching the pontiff if he is subject to any impediment (2).

CHAPTER VI. ON THE OFFICE AND OTHER DUTIES OF THE CONFESSOR. 99 and 100. On the necessary knowledge of the confessor. – 101. How many are the duties of the confessor? – 102 and 103. I. On the examination. – 104. II. On the judgment of sins. – 105. III. On instruction. – 106 and 107. IV. On admonition. – 108 to 112. If the admonition will not be beneficial. – 113. If the marriage is null. – 114. If the betrothed are ready for marriage. – 115. If there is an obligation of restitution. If the admonition will be beneficial later. – 116. If the penitent asks, etc. If there is a common detriment. In case of doubt whether the admonition, etc. – 117. V. On absolution. – 118. What certainty is there about absolution, etc. – 119. If the penitent has a probable opinion about himself. – 120. If the penitent denies or conceals a sin. 121. VI. On correcting errors. On errors concerning the value of the sacrament. – 122. Concerning restitution from which the penitent has been dissuaded, etc. – 123. Or to which he was not obligated. 124. Can a penitent be admonished without his consent being requested? – 125. VII. On the obligation to administer this sacrament. Whether in the case of danger of death, etc. – 126 and 127. Whether a simple priest is obliged to make himself available.

99. In order to administer this sacrament of penance, the first thing that must be acquired is the necessary knowledge, by which he may properly perform the duties of this great ministry. But it should be noted that St. Gregory wrote that it is the art of arts, the governance of souls. And St. Francis de Sales said that the office of the confessor is of the greatest importance and the most difficult of all. And so it is: it is of the greatest importance, because it is the end of all sciences, which is eternal salvation; it is difficult, because 1. it requires knowledge of almost all other sciences, and of all offices and arts. 2. Moral science encompasses so many disparate subjects. 3. It largely consists of positive laws, which must be understood according to their own meaning and understanding. Furthermore, because of the circumstances that make cases dissimilar, resolutions must vary. Some who boast of being learned and theologians of great note (whom moralists, whom they call with the shameful name of *casuistas*) disdain even to read. They say that it is sufficient to know the general principles of morals in order to properly receive confessions; for they say that all particular cases can be resolved by them. Who can deny that all particular cases must be resolved by these principles? But the whole work, and the whole labor, lies

in adapting particular cases to the many different circumstances, and in discerning which of these principles apply in the given circumstances. (1) *Lib. 6, n. 563, Dubit. II.* – (2) *Ibid. Dubit. III.*

[*Latin ed. p. 456*]

444 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. It is fitting to consider this. This cannot be done without a thorough examination of the reasons that apply to each side. And this is what moralists have done, when they have elaborated in explaining from which principles many particular cases must be resolved: moreover, in our time, as has been said, there are so many positive laws, so many bulls, so many decrees, which cannot be understood unless casuists are read, who have collected them, and as the variety of subjects requires, these are found there; therefore, the more recent the moralists are, the more useful they are to the ancient. The author of the Instructions for new confessors (1), rightly states that many theologians, the more profound they are in speculative sciences, the more ignorant they are in moral sciences, which, as Gerson (2) writes, are the most difficult of all, and no one learned, however versed he may be in these matters, is such that new things do not happen to him every day. From this, he infers that confessors should never abandon the study of moral theology. The most learned Sperelli (3) also says that those confessors who devote themselves entirely to scholastic studies are greatly mistaken, considering the time spent on morals to be wasted; "and afterwards they do not know how to distinguish leprosy from leprosy": this error, he adds, "leads confessors and penitents alike into eternal confusion." Therefore, it is undoubtedly a grave sin for one who is not sufficiently instructed to dare to hear confessions: the bishop who approves him: and also the penitent who, knowing his ignorance, confesses to him. 100.—We do not deny that less knowledge is required to hear the confessions of simple and rural people than of courtiers, merchants, clerics, and the like. Less knowledge is also required to hear confessions in a town than in a city; and especially if there is such a shortage of confessors in some places that penitents should either abstain from confession for a long time, or go elsewhere (4). But this is not enough to excuse some confessors, who, having read some brief summary of morals, rashly venture to hear confessions. At least, a confessor should know 1. to which jurisdiction he extends. Let everyone understand that secular and regular priests of another order cannot hear the confessions of religious without the permission of their superiors; except in cases where they are traveling, or if they die elsewhere, and they have no companion or other suitable priest of the same religion. And then, religious can be absolved by any simple priest (except Capuchins, see n. 88), while superiors, by giving permission to their subordinates, intend to give it according to custom, that is, to confess to any suitable priest (5). Also, any confessor should know the cases and censures reserved to the bishop, at least those

into which people most frequently fall, such as papal excommunications, which are in the Bull Cænæ, external heresy, the reading or retention, or sale of heretical books which explicitly deal with religion, or contain formal heresy; also the five cases of Clement VIII, which are grievous or moderate injury to a cleric or monk, real or confidential simony, violation of the enclosure of nuns for a bad purpose, violation of ecclesiastical immunity, and dueling: also the excommunications issued by the Supreme Pontiff Benedict XIV against those who absolve accomplices in scandalous matters (6), and against those who teach that the name of an accomplice can be obtained from a confessor, even through the sacrament of absolution. (1) Part. i. v. 18. — (2) Tract. de Orat. — (3) De Episc. p. 3. c. 4. — (4) Lib. 6. n. 625. — (5) N. 575. — (6) N. 553.

[*Latin ed. p. 457*]

ON THE DUTIES OF THE CONFESSOR. 445 Such a denial, if he refuses to reveal [the truth], and other excommunications that can be observed in the treatise on censures. 2. He must be able to distinguish between venial and mortal sin, at least in their general nature, and he must know about other matters, or at least be able to doubt them. 3. He must know the questions he must ask: the circumstances that change the nature of sins, at least in appearance; what constitutes proximate occasion; what induces the obligation of restitution; also, what kind of sorrow, and purpose, and finally, the remedies most effective for amendment. And to be brief, I affirm that the confessor is in a state of damnation who exposes himself to hearing confessions without sufficient knowledge. God Himself reproaches him with these words: "Because you have rejected knowledge, I will reject you, that you may not serve Me as a priest" (2). Nor will the approval of the bishop excuse him, if he manifestly knows himself to be unfit, for approval does not impart the necessary knowledge, but presupposes it. I say plainly, that while he who merely doubts may well, indeed, ought to rest in the judgment of his superior, provided he strives to make himself fit through more diligent study. But no confessor should neglect the study of moral theology, because, of all the many and diverse things that pertain to this science, many things, although read, are forgotten over time; therefore, it is necessary always to recall them to memory through frequent study. 101. Furthermore, it must be noted that there are other duties of the confessor, namely: 1. to investigate the conscience of the penitent. 2. To form a judgment about the gravity and number of sins. 3. To instruct the penitent about what must be known concerning faith and morals. 4. To remind him of his obligations. 5. To grant absolution, if appropriate. 6. Finally, the confessor is obligated to correct any errors he has committed in hearing confessions. 102. Therefore, the confessor is obligated to diligently know the conscience of the penitent. The confessor is a judge; the office of a judge implies that just as a judge must first know the reasons, then discuss the

points of the case, and finally pronounce judgment, so too the confessor must first become aware of the conscience of the penitent, then examine his dispositions, and finally grant or deny absolution. And with regard to the first duty, which is to know the sins of the penitent, although the duty of examining one's own conscience is primarily the penitent's, nevertheless (whatever other doctors (3) may have said), there is no doubt that if the confessor knows that the penitent has not sufficiently examined his own conscience, he is obligated to question him, first about the sins in which he may have possibly fallen, and then about their number and nature, as is proven from chapter "Every one of both," etc., of the *Penitential* and the *Roman Ritual* (4). 103. And here many things must be noted: 1. It is wrong to dismiss those who are uninstructed, so that they may better examine themselves: P. Segneri (5) calls this an intolerable error, and rightly so, because those who are dismissed will, however much they may try, find it difficult to examine themselves as thoroughly as the confessor can examine them; and on the contrary, if they are dismissed, there will be a danger that, frightened by the difficulty of examining themselves, they will be deterred from confessing, and will become hardened in their sins (6). Therefore, the confessor should himself examine those of this kind (1) Book 6, n. 491. — (2) Hosea, chapter 4, verse 6. — (3) See Lochner, *Instructio*, p. 33. — (4) Book 6, n. 607. — (5) *Confess. Instr.*, chapter 2. — (6) Book 6, n. 607, see here.

[*Latin ed. p. 458*]

446 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. When examining penitents, it is necessary to inquire about their sins by questioning them according to the order of the commandments, especially if they are servants, coachmen, muleteers, soldiers, guards, innkeepers, and others of that kind who are often negligent of the life of eternal salvation and are ignorant of divine things, because they are far from sermons and churches. And it would be a worse error if a confessor were to dismiss someone who is uninstructed, simply because they have omitted some sin out of shame, even though confessions covering many years might be necessary, due to the greater danger involved, namely, that if they do not return, they will perish. I seem to hear some confessors say: "If he does not return, it will be worse for him." How beautiful is the spirit of charity! But those who have a true zeal for saving souls do not speak in this way; rather, let us say, those who perform this office solely for God. Nevertheless, the confessor should not be so meticulous in questioning; he should only inquire about sins into which they can easily fall, considering their condition and capacity (1). Indeed, if a penitent, even if uninstructed, appears sufficiently instructed and diligent in confessing their sins with their circumstances, according to their state and capacity (for a learned person is bound to examine themselves in one way, and an uninstructed person in another), then the confessor is not

bound to ask anything else (2). It should be noted that, according to St. Augustine and the Council of Trent, it is better if the confessor examines the sins one by one as the penitent explains them, rather than postponing the examination until the end; because either the confessor easily forgets what he has heard, or the penitent, burdened with their heavy task, would be obliged to repeat their confession (3). 3. It is an error for confessors to attempt to make a certain judgment about the nature of a sin, whether it is grave or venial, by asking these uninstructed individuals whether they considered it to be a mortal or a venial sin; for they often answer as the words suggest to them, and this we have witnessed through experience (as I have observed many times). If the confessor asks again a little later, they will answer in a way completely different from the first time. 4. Regarding the number of sins, which some habitually commit, and for which a certain number cannot be determined, the confessor should seek to know the state of the penitent, namely, their way of life, the time they devote to other activities, their usual association with a partner, and the place where they spend most of their time. Then he should inquire about the number, asking the penitent how many times they have committed the sin approximately in a day, or in a week, or in a month, suggesting several numbers to them, for example, three or four, eight, or ten, so that he may see which number they are most inclined to; and if the penitent adheres to a larger number, it would be best to ask them again about a larger number, but in this, as Busembach rightly observes, the confessor should not be too concerned or anxious to form a certain judgment about the number of sins; he should note the frequency in general, and should make a judgment in a general way, understanding that as many sins as there are before God. Some doctors say that regarding internal sins of those who are habitually inclined to them, such as sins of hatred, lust, and wicked desires, it is usually sufficient to ask about the length of time that the bad habit has lasted; but this does not satisfy me completely, because it is possible that one person may be more focused on external activities, or may spend time in places where fewer opportunities for wicked thoughts arise, while another may be more easily attracted by passions of the mind; therefore, it is necessary to use general questions about their activities, their location, their inclinations, etc., in order to form a more accurate judgment of the degree of their inclination. (1) Book 6, paragraph 607, see also Book 3. (2) Ibid., see also Book 2. (3) Paragraph 607, see also Book 4.

[*Latin ed. p. 459*]

ON THE OFFICE OF THE CONFESSOR. 447. Concerning the frequency of internal acts. Furthermore, after two or three questions, the confessor should not be alarmed if he judges that the penitent's understanding is too confused; for from complex and confused consciences, it is morally impossible to expect greater clarity. 5. In general, it is not advisable for the

confessor to reprimand the penitent during the course of confession, lest he be frightened and omit some sin. Nevertheless, it is sometimes advisable to point out the wickedness of a more serious sin within the confession, provided that he immediately encourages him by saying: "But now, do you truly want to change your life? Then, make this confession a good one; do not be afraid; tell me all your sins, for I will absolve you from them all." 6. It must be noted that although general confessions are very useful, the confessor should not be too insistent in requiring the repetition of past confessions (1), for presumption is taken as validity, whenever the error is not manifest, as Segneri says. Nor are relapses certain indications that the confessions were invalid, especially if no relapse has occurred for some time, or if, before relapsing, he has made some progress. However, a different judgment must be made if the penitent frequently relapses, namely, within two or three days of the confession, without resisting temptation in any other way; for then, there appears to be a moral certainty of a lack of sorrow and purpose. 104. — II. When the confessor has heard the sins, he is bound to make a judgment on their gravity and number, because, although it is sufficient for valid absolution that he knows the sin, at least under a confused notion of the sin; nevertheless, in order to absolve licitly, he must prudently form a judgment of the guilt of each, at least in those matters that occur with all things; otherwise, for more obscure and less usual matters, it is sufficient that he hates them and absolves them, as they are before God, as Lug. Holzm. Salm. Spor. etc. (2) say. It should be noted here that confessors often err who seek to form a certain judgment on the quantity of sin, whether it is grave or venial, by asking uneducated penitents how they considered it in their conscience, whether as mortal or venial. These people usually answer at random, and say what comes first to their mouth, and this is known by experience (as has happened to me many times), that if the confessor asks them again soon, they say the exact opposite. Furthermore, it should be noted, with regard to the penitent's obligation, that if he realizes that the confessor does not understand the gravity of his sin, he is bound to inform him, otherwise his confession will be sacrilegious. And likewise, if, after the confession, he realizes that the confessor has not perceived his sin, he must repeat it. 105. — III. The confessor is bound to instruct the penitent when he observes, or prudently judges, that he is ignorant of necessary matters of faith and salvation. Otherwise, it is sufficient that he instruct him about the principal mysteries, as mentioned above, tr. 4, n. 3, before granting him absolution; for as to other necessary matters of precept, it is sufficient that the penitent promises to have himself instructed by others, at least in substance; and confessors who are fervent in charity do not refuse to teach them themselves. The confessor must also instruct the penitent about the obligation of making amends for damage to reputation, honor, or property, of avoiding occasions, of repairing scandal, of making amends, or of giving alms, when he is bound to do so. Also, it should be

noted that if the penitent approaches in an improper state, the confessor is bound (as Laym. Suar. (1) Lib. 6, n. 605. — (2) N. 697. — teach)

[*Latin ed. p. 460*]

448 TRACT. XVI. ON THE SACRAMENT OF PENANCE. (Busemb. Spor. etc.) He must exert himself to the best of his ability to prepare him for absolution (1). Regarding this, I do not know how those confessors can excuse themselves before God, who, when they recognize that the penitent is not sufficiently disposed, dismiss him, saying to him in an uncivil manner: "Go away from here; I cannot absolve you; return later." I say that, according to the cited authors, the confessor, whenever he receives the confession of a penitent, is bound by a strict obligation of charity to do everything possible to prepare him for absolution, by presenting to him the ugliness of his sins, the efficacy of divine grace, the danger of damnation, and similar truths. He should not refer to the fact that others are waiting, and that he must attend to them, lest he only consider their needs. He is then not bound to consider the needs of others, but only those of his penitent; for this alone he will be held accountable to God at that time, not for others. It is better, (St. Francis Xavier said), to hear a few confessions properly, than many hastily and without benefit. How many have come to me unprepared, and I, with divine help, have endeavored to prepare them: and I have safely absolved those who were prepared, to my greatest consolation! At the very least, this will serve to ensure that he is properly instructed so that he may be prepared when he returns. 106. IV. The confessor is obligated to admonish the penitent. But in order to give suitable admonitions, the confessor must not only know the nature and number of sins, but also their origin and causes, so that he may apply appropriate remedies. Some confessors only ask about the nature and number of sins, and nothing more: if they see the penitent is disposed, they absolve him; if not, without saying anything to him, they immediately dismiss him, saying: "Go, I cannot absolve you." Thus do not act good confessors. These first seek to investigate the origin and the gravity of the evil, by asking about the habit of sinning, about occasions, about the time, about the place, about the people with whom, and under what circumstances: in this way they can better correct the penitents, prepare them for absolution, and add salutary remedies. 107. After these questions have been asked, and the origin and gravity of the illness have been ascertained, the confessor should proceed to make the necessary admonitions. And although he must listen to the penitents with charity, as a father, he is also obligated (as much as is necessary) to warn and correct them, especially those who are burdened with many mortal sins and rarely come to the sacrament of penance. He must also fulfill this duty, even if the penitent is of some prominent standing, namely, if he is a magistrate, a prince, a priest, a pastor, or a

prelate, and if he accuses himself of some omission of his duties without undue emotion. Pope Benedict XIV, in the Apostolic Constitution, dated June 26, 1749, § 22, states that the admonitions of confessors are more effective than sermons themselves; and rightly so, because the preacher is unaware of the particular circumstances that are clearly known to the confessor; therefore, he can much better apply the necessary admonitions and remedies that are beneficial to the sick; and thus the confessor is also obligated to admonish the penitent about any culpable ignorance, if he suffers from it, whether it be of natural or positive law. If the penitent is subject to culpable ignorance, then if it is about matters necessary for salvation, or if it pertains to the common good, the confessor must certainly remove him from this ignorance and teach him the truth, even if no benefit is expected. (1) Lib. 6. n. 608. v. IIIc.

[*Latin ed. p. 461*]

ON THE DUTIES OF THE CONFESSOR. 449 108.—But it is asked: if the ignorance concerning a matter is such that it is invincible, and the penitent is acting in perfect good faith, is the confessor bound to admonish about the truth, even if no benefit is expected to result from the admonition? Some doctors assert, as Adria, Wigandt, Conc. and a few others, along with Eliz. and Gonzalez (although these latter exclude ignorance concerning human precepts): this opinion has recently been defended by Father Liberius de Jesu, a Carmelite, in his *Controversiae dogmatice*; but he gains little honor from this, since the reasons he uses are very flimsy. The reasons he adduces are the same ones that are brought forward in opposition. On the contrary, the common and true opinion holds, as stated by Cano, Suar., Nav., P. Sot., Cord., Laym., Sanch., Lug., Vasq., Castrop., Bonac., Ponc., Conine, Anacl., Escob., Roncag., Spor., Elb., Viv., Holzm., Salm., and countless others (1), and in this I find agreement with two other authors of a very strict doctrine, namely Habert and Antoine; speaking of a marriage that is invalid due to some hidden impediment, Habert says: "If, against a hidden evil, which is invincibly ignored, no remedy appears, and serious inconveniences are foreseen, the impediment must be concealed (by the confessor), and the marriage must be maintained in good faith." And Antoine writes similarly: "If there is a probable danger that the admonition will lead to a formal sin on the part of the penitent, or to a grave scandal, etc., the admonition must be postponed, and dispensation must be sought." 109. The authors of our opinion prove this by citing the text of St. Augustine, as reported in canon. If anyone, from *De Paenitentia*, d. 7. But Conc. solves this text quite appropriately, because it is not relevant to the matter; rather, the authority of St. Bernard is more fitting (serm. 41, in Cant.), who says: "I would rather sometimes be silent, and conceal what I perceive to be done wrongly, than to reproach so severely as to cause great harm." They also prove it by citing canon. *Quia circa*, from *De Consanctis*, where

Innocent III, when asked about some who were married by a surreptitious dispensation, responded to the bishop: "You may conceal it, if you see that separation will cause a great scandal." But this decretal is not entirely convincing, since it is doubtful whether the Pope, in responding in this way, intended perhaps to grant a dispensation over the impediment, as is said in the root of marriage. Furthermore, this opinion is proven by a very valid reason, namely, that from two evils, the lesser must be permitted, in order to avoid a greater one: therefore, in our case, the confessor must be silent and allow the penitent (acting in good faith) to remain in a material sin, so that he himself may be freed from a formal sin, by not revealing the truth of the matter; for God punishes only the formal sin, and He declares that He is offended only by this, and therefore, consequently, we say that the confessor sins by acting otherwise. But this reason will be better explained in the responses to what is objected. 110.—It is objected 1. the passage from Ezekiel: "When I say to the wicked, 'You shall surely die,' and you do not speak to warn the wicked to turn from his way, so that he shall live, then you are guilty of his death." Ezekiel 33. 8. But does not this refer to a wicked person who is in bad faith, and whom the confessor is certainly bound to correct in all cases, so that he may recover his senses? And so must other passages of Scripture and the words of the holy Fathers, which are brought forward in opposition, be understood. It is objected 2. (1) Lib. 6, n. 610. — (2) Ibid. 29.

[*Latin ed. p. 462*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE.

450. Those who cause scandal. It is said in the *Regulae Juris* (3), "It is more useful to allow scandal to arise than to abandon the truth." But in order for this statement to be understood, it is necessary to consider the case that Bede, the author of this text, was discussing. Bede (as reported by the Glossary) was speaking of that which Jesus said to the Pharisees: "Not that which goeth into the mouth defileth a man: but what cometh out of the mouth, this defileth a man" (Matthew 15:11). Therefore, when Bede speaks of mere Pharisaical scandal, he says that it is permissible for the Pharisees to be scandalized, or, to put it better, to be astonished by the doctrine as being lax, because it is more useful to allow this scandal to arise than to omit the exposition of the truth.

What, then, is relevant to our case? Some object with a certain doctrine of St. Thomas (1). But St. Thomas clearly states that the truth is not harmed when it is concealed by a preacher, whose duty it is to reveal it, but rather when it is mutilated, that is, when part of it is revealed and part is concealed, so that from this concealment, some error is spread among others. For example, if a preacher were to say: "In the third degree, it is not permissible

to contract marriage between close relatives," the listeners would be led to believe that it is permissible in the Quarten.

Some object (4) and say that confessors also have the duty of a doctor, and therefore they must be held to teaching the truth. It is answered that the confessor performs the office of both a doctor and a physician; therefore, when he observes that a certain course of action, namely, an admonition, will be detrimental to the penitent, he must abstain from it. And although he is a doctor, because his office is one of charity, instituted by the Redeemer solely for the good of souls, he must certainly teach the truth, but only concerning those things that are beneficial to the penitent, and not concerning those that are harmful. Therefore, St. Thomas (2) says, speaking of one who has the duty of teaching: "He should not teach the contrary to the truth, but should propose the truth (note) according to the circumstances of time and persons, to him to whom it is entrusted to teach."

Some object (5) that the penitent's ignorance in this case is not invincible, but vincible, since the way to know the truth is clear to him; and if it is vincible, then it is also blameworthy. But it is answered that, for ignorance to be blameworthy in any way, it is not enough that one be able to know the truth, but it is necessary that doubt about the precept should arise; otherwise, that ignorance is necessarily invincible. It is certain, as St. Thomas teaches (3), that ignorance is invincible when it cannot be overcome by effort. Therefore, how can one overcome his ignorance if no doubt about it, or at least about the obligation to overcome it, comes to mind? Therefore, the Doctors St. Antoninus, Sylvestrus, Gerbertus, Suarez, Cajetanus, Navarrius, Armilius, Castropus, Sanchius, Vasquez, Sayrus, Salmerius, etc. (4) teach that, in order to constitute vincible ignorance, it is necessary that a person be aware of the precept, or at least of the obligation to be aware of it. Just as, in order to be obligated to observe the law, it is necessary that the law be made known to us; so, in order to be obligated to be aware of the law, it is necessary that such an obligation be indicated to us, or at least that there be a doubt about it. Therefore, the following conclusion is rightly drawn by Father Segneri (5), speaking on this point: "Ignorance is invincible when the person does not subject himself to the principle of doubt, and consequently, no means is offered to him to overcome his error."

Some object (6) and say: If such a penitent were admonished (1) In 4th, d. 38, q. 2, a. 3; (2) 2nd, 3rd, q. 45, a. 7, 2nd; (3) 3rd, 4th, 7th, a. 2; (4) Note; (5) Book 1, chapter 7 of the "Instructions for Confessors."

[*Latin ed. p. 463*]

ON THE OFFICE OF THE CONFESSOR. 451. Already, he is sinning, for he already becomes guilty through vincible ignorance; therefore, he is always unprepared for absolution. But this argument, to which the adversaries cling so strongly, seems to me unworthy of their supposed wisdom. Who does not see the fallacy involved, and the clear answer that is evi-

dent? In the penitent, an interpretative disposition is not necessary, namely, that if he were found to be in such and such a conflict of circumstances, he would not sin, when he has not at all reflected on it; for otherwise, if confessors were to presume to judge the interpretative dispositions of the penitents, they could absolve very few, since they could judge that many of those to whom their sons had been killed were certainly moved by hatred towards the murderers; if they had been tormented by tyrants, they would lose their faith. Therefore, it is sufficient in the penitent to find that actual disposition, so that he may be absolved; namely, that he declares here and now that he intends not to sin in any way, and in general. And thus, it is sufficient for absolution that the penitent is here and now disposed by an actual will; nor does it matter if he was disposed interpretatively, namely, if he had been warned by the confessor. Therefore (let us conclude), from these objections, it is recognized that the opposing opinion cannot persist. As also (I would like to digress a little) there are certain other opinions that some today wish to defend, who seem to boast of being of a more rigid name. Otherwise, it has never been my intention to commend those authors who, in order to consult the good of souls, have wished to relax the consciences too much; for although the Lord wishes all men to be saved, He wants them to be saved through the observance of His laws. But neither can I praise those who seek to coerce consciences too much, by assigning many laws that God has not willed, or at least has not made manifest that He wishes us to be bound by. I do not know whether it is less harmful to force souls to adhere to certain opinions that are too rigid, with the danger of their total ruin, than to approve of opinions that are too lenient. What is worse is that at this time, many books are circulated, filled with insults, harsh rebukes, and satirical barbs, alternately among authors of both very rigid and very lenient opinions; which is a scandal to the Church and offers material for the mockery of enemies. And equally, in order to place the truth plainly before us, it obscures it more, because through such a manner of speaking, anyone can easily think that it is not reason, but rather adherence to a preconceived opinion, that has driven them to write in this way, and those who speak from adherence and passion do not gain credibility, nor do they persuade others. 113. — But let us return from where we have strayed. From the aforementioned common opinion, it is inferred that, according to Laym, Sanchez, Lug, Castrop, Salm, Holzm, Hab, Anthony, and others, in the case where the penitent has contracted a marriage that is invalid due to some hidden impediment, and is acting in good faith; and it would be a danger of infamy, scandal, or incontinence, if the nullity were revealed to him, then the confessor ought to leave him in good faith, until a dispensation is obtained for him; except if a dispensation can be readily obtained from the Pope; or at least from the bishop, according to the common and very probable opinion (1); but if there is no time to go to the Pope, and otherwise the danger of scandal or infamy looms, the bishop

can dispense in even diriment impediments after the marriage has been contracted; see treatise 20, no. 56. But in that case (1) Lib. 6. no. 522.

[*Latin ed. p. 464*]

452 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. If a wife confesses that she has denied her husband a debt, the question arises whether the confessor can obligate her to fulfill that obligation. Many affirm, as Lug, Sanch, Coninch, Cord, Henriq, Esc, Lod, Croix, etc., that in such a case, since she believes the marriage to be valid, she is bound to follow the dictates of her conscience. However, it seems to me safer to follow the opinion of Soti, Hurtad, and Bonac, who state that the confessor should then tell her in general that she cannot be absolved if she refuses to fulfill her obligation; and that it is already known that the woman owes her husband a debt (1). But if the marriage contracted is not valid, but is merely intended to be contracted, the question arises whether the confessor should warn the penitent of the nullity, if he perceives that such a warning would be of no benefit? Some absolutely deny this; others affirm it, but Castrop and Salm more plausibly state that, speaking generally, such a warning should be given in this case, especially if the impediment arises from consanguinity, because in that case, there is no impediment to the marriage itself: all the more so, because such an impediment can easily be discovered later by the betrothed themselves, and then their sin can easily become formal from what was originally material. Therefore, in such a case, when there is always some hope that it will be beneficial, the correction should not be omitted: so says Laym.; but if there is absolutely no hope of benefit, the same cited authors, Layman, Castrop, Salmant, Croix, and Aversa, say that the confessor should remain silent until he obtains a dispensation (2). 114. But here it is appropriate to speak of a certain case that is easy in its outcome, but difficult in its resolution. How should the confessor act if, with the betrothed already prepared in the church for the celebration of the marriage, one of them reveals a hidden impediment in confession, and the marriage cannot be postponed without shame or scandal? Some doctors suggest that the penitent should vow chastity, at least for a time, so that this reason can be presented for postponing the marriage. But Ronc. and the Instruction for new confessors rightly state that this remedy is not without danger, because it can easily be recognized as a pretext. Others maintain that such a marriage should be permitted without anything being said. But Suar, Pignat, Cabas, Sanch, Bonac, Ronc, Salm, etc., and indeed Benedict XIV (3), teach very probably and commonly that in such a case, and in such a difficult situation, the bishop can grant a dispensation; and they state that Sanch, Ronc, Castrop, Coninch, Vasq, Val, Salm, Elbel, etc., can delegate this power to others, even generally, as long as it is attached to the episcopal office. Indeed, Ronc. and the Instruction, etc., say, with the authority of Pignat, that since in this

case the law of impediment becomes harmful, the parish priest or another prudent confessor could declare that such a law does not apply. However, they advise, for greater security, and also out of reverence for the laws of the Church, that recourse should be had to the Sacrament of Penance in order to obtain a dispensation (4). 115. — Hence it follows that, as Cano, Suar, Ponc, Laym, Sanch, Lug, Vasq, Coninch, Ronc, Salm, and others also commonly state, when there is absolutely no hope of benefit, the warning to make restitution should also be omitted, because the spiritual harm to the neighbor should be avoided before the temporal harm to another. And Suar, Lugo, Sanch, Laym, Ronc, Vasq, Castrop, Salm, say the same if there is fear that the warning will cause scandal, shame, or quarrels; because it is always better to avert a formal evil than a material one.

(1) Book 6, n. 611.

(2) N. 612.

(3) De Synod, book 9, chapter 2, n. 3.

(4) Book 6, n. 615.

[*Latin ed. p. 465*]

ON THE DUTY OF THE CONFESSOR. 453. (1) Some, such as Roncaglia and Viva, along with Layman, maintain that one should not easily judge a penitent who, knowing the truth, refuses to obey; and if not immediately, at least when the disturbance of mind has subsided. Lugo, along with others, states that admonition should not be omitted, even if it causes scandal, because there is hope that the scandal will cease in a short time; but this teaching must be understood as taught by Benedict XIV, namely, that it applies in the case where, while the confessor is present, the sinner persists in evil, causing scandal to others; or when the penitent is on the verge of committing sins, even only in thought, to which he was formerly accustomed (2). Conversely, Lugo, Tamburrini, and Busembach state that the confessor may leave the penitent in good faith, and postpone the admonition to a more opportune time, if he fears that, at that moment, the penitent will not bear it well (3). 116. However, there are two cases in which it is not permissible for the confessor to omit revealing the truth to the penitent. The first is when the penitent asks him; for then, undoubtedly, the confessor must reveal the truth to him, unless there is now an invincible ignorance (4). The second case is when, from his ignorance, a spiritual harm would result to the community, as taught by Lugo, Busembach, Aversa, the Salmanticenses, the Dicastery, etc. (5), because then the confessor is obligated to admonish the penitent, even if the admonition causes him scandal; for such a penitent, seeing that he will not be absolved unless he repents, is expected to amend at least within a certain time; on the other hand, it does not matter that the admonition at that time is an occasion of ruin for him, because the confessor is constituted not only for the good of individual penitents, but also for the good of the entire Christian republic,

and therefore he must prefer the common good to the private good of his penitent. Therefore, princes, governors, prelates, pastors, and confessors, who neglect their duty, whether by unjustly administering justice, or by choosing unworthy ministers, or by conferring offices or benefices on the unworthy, or by squandering the fruits of their benefices to the scandal of others, or by improperly administering the sacraments, must be admonished by the confessor; for the ignorance of these people will hardly be invincible, and even if it were invincible, it would always cause harm to the community, at least through scandal, since others would easily think that it is permissible to do what they see being done by superiors. And as taught by Benedict XIV in the aforementioned Apostolic Bull, the same practice should be followed with those who frequent the sacraments, lest others take a wrong example from them (6). What should be done by the confessor when there is doubt whether the correction will be beneficial or harmful, Lugo, Dicastery, Salmanticenses, etc., say, is to weigh the fear of damage and the hope of benefit, and to choose what seems to be the more important. Furthermore, speaking regularly, in doubt, evils should always be avoided, formal rather than material; the Council, speaking of fraternal correction, says that in doubt whether it will be beneficial or harmful, it should be omitted, because he acts imprudently (as he writes) who, by doubting, exposes himself to the danger of causing another to sin (7). 117. V. The confessor is obligated to absolve the penitent when he is disposed. Many things must be considered regarding this disposition. 1. There are very few penitents, especially the uneducated, who approach confession with a prepared heart. Some confessors believe that they have fulfilled their duty sufficiently (1) Lib. 6. n. 614. v. Infertur II et III. — (2) N. 616. v. Excip. III. — (3) N. 609. 9. v. Si etiam. — (4) N. 616. v. Excip. II. — (5) N. 615. — (6) Ibid. — (7) N. 616. v. Utrum.

[*Latin ed. p. 466*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE. If confessors were to question penitents only in this manner: "Tell me," they would ask, "do you ask forgiveness from God for all these things?" (which is truly not a true act of sorrow); or, "Do you truly repent from the bottom of your heart for all your sins?" And, without any other intervening words, they would administer absolution. This is different from the practice of good confessors; for they first strive to instill in the penitent (speaking of those who are bound by mortal sin) true sorrow and detestation of sins, and they prepare them for this beforehand, for example, with words such as: "My son, where should you be eternally? In hell. In that fire, you would always be tormented... And you would have no hope of ever being rescued from that place... There you would remain, abandoned by all, rejected by God for all eternity... Therefore, are you truly sorry for having offended God, because of the hell you have deserved?" It must be noted that an act

of attrition is not performed if someone says that they repent of the sin they have committed, because they have earned hell; rather, they must say that they repent of having offended God, for which they have earned hell. Afterwards, care must be taken to elicit an act of contrition in this manner: "My son, what have you done? You have sinned against the highest and infinitely good God: you have not considered His worth; you have turned your face away from Him; you have cast Him behind you; you have despised His friendship and grace. Therefore, since you have offended God, the source of infinite goodness, may you now truly repent from the bottom of your heart. Detest and hate all the evils and all the injuries with which you have unjustly afflicted God, who is so good. Are you not now ready to die a thousand times, rather than commit these things again in the future?" It should be noted that, speaking regularly, confessors are to absolve those who are disposed; but they can also postpone absolution, when they know that it is advisable, as the common doctors teach (1). However, whether it is advisable or not to do so without the consent of the penitent, see what is said below in section 2 of the final paragraph, when we will speak of those who relapse. It should be noted that the confessor must be certain of the penitent's disposition, so that he can absolve him, since the acts of the penitent (in which the disposition consists) are the matter of the sacrament of penance; but as in the other sacraments, since the matter is physical, the certainty must also be physical; thus, in this case, since the matter is moral (being internal, and therefore, somewhat imperceptible to the senses), moral certainty is sufficient; according to the rule of St. Thomas (2), who says: "Certainty is not to be sought in the same way in all things, but in each matter according to its own nature: therefore, it is sufficient for the confessor, for the purpose of granting absolution, to have a prudent and probable judgment about the penitent's disposition, as the Instructor Confes. nov. (3) writes, provided that there is no prudent suspicion to the contrary about the disposition. The same is said by Father Cardinal Mazzotti and Father Suarez, who write: "It is sufficient that the confessor prudently and probably judges the penitent to be disposed." The same is taught by the Roman Catechism (de Pænit. n. 82): "If, after hearing the confession, the priest judges that the penitent has completely lacked diligence in enumerating his sins, or sorrow in detesting them, he may not absolve him." Therefore, according to the catechism, he can absolve the penitent whenever he does not judge that he has completely lacked sorrow, for everything else is to be presumed to have been present in the penitent who has already confessed (4). 118. — Here we come to speak of that great question which is so much debated today.

(1) Lib. 6. n. 442.

(2) 2. 2. q. 47. n. 9. ad. 2.

(3) Instruct. p. 4. v. 25. n. 460.

(4) Lib. 6. n. 57 et 461.

[*Latin ed. p. 467*]

OF THE DUTY OF THE CONFESSOR. 455. The question is debated among doctors whether a confessor can and should absolve one who wishes to follow a certain opinion which he judges to be probable, even if the confessor himself does not hold that opinion. If the penitent is uneducated, to the extent that he is unable to form a correct conscience based on the probability of that opinion, then it is certain that he cannot be absolved. However, the question remains: if the penitent is capable of forming a correct conscience, can and should the confessor absolve him? Some, such as Fagnan, Elizer, Antoninus, and others of a stricter opinion, deny this, saying that in the sacrament of penance, the confessor is the judge, and the penitent must stand by the judgment of his judge. However, the common teaching holds that in such a case, the confessor can and should absolve, under a grave penalty (at least if the confession concerns a serious matter, as Suarez, Sanchez, etc., say); (1) to deny absolution for a minor matter does not exceed the venial. Thus, Navar, Soto, Azor, Suarez, Salm, Medrano, Castrop, Valentia, Sayr, Vasquez, Laym, Roncaglia, etc., and even the authors of the probabiliorist school, such as Wigand, Pontas, Victoria, and Cabas, agree with this. It must be noted, however, that Navar and St. Antoninus teach that if there are contrary opinions of doctors, and if the confessor believes himself to be based on a clear text or reason, he should not absolve the penitent who is in doubt; but if the confessor does not have such strong reason, or if the penitent has an equal or nearly equal reason, and has a doctor who supports him, then he can absolve him, as we stated after Adrian, in Can. 7, n. 66. Let us also hear St. Antoninus (3). "The confessor should beware," he says, "not to give a judgment on a mortal sin when he is not certain and clear; where there are various opinions, he should consult what is safer, but he should not despise the opinion that holds the contrary, lest he deny absolution because of this" (note). However, he adds later that if the conscience of the confessor absolutely dictates that something is mortal, which is the same thing that Navar says, and which we also point out here, namely, that the opinion of the penitent appears entirely false to the confessor, then he should not absolve him. He confirms this elsewhere (4), saying: "If the confessor believes that it is a sin, he must make his conscience; but if he does not want to know that it is a sin, he is not bound to absolve him." This must be understood with a grain of salt, namely, that the penitent holds his opinion to be based on a valid foundation; and, on the contrary, the confessor does not have that the opinion is entirely false (as we have said), but rather that it is based on reason, not on prejudice. St. Raymond (5) says the same: "However, I advise you not to be too quick to $\text{judge mortal sins when you are not certain from a clear Scripture; otherwise, people may be

led to despair.}$" The most learned Sylvius (6) also says, speaking of the superfluous adornment of women: "If confessors cannot clearly perceive whether something is mortal or venial, they should persuade the penitent to abstain; but if he does not want to, they should not make his conscience about it as a mortal sin, nor should they deny him absolution." Thus, the authors, both ancient and modern, speak uniformly. 119. The reason for this teaching is that, after making confession, the penitent has a certain and strict right to absolution; therefore, the confessor inflicts a grave injustice upon him whenever the opinion of the penitent is not

[*Latin ed. p. 468*]

456 TRACT. XVI. ON THE SACRAMENT OF PENANCE. It seems entirely false. Nor is it valid to say that the penitent is not properly disposed, since he refuses to follow the judgment of the confessor; for it is answered that the confessor is not a judge of the opinions to which the penitent is bound to adhere, but only of the penitent's own disposition, as is clear from the Council of Trent, Session 14, chapter 5, where it is said that priests are judges only in so far as they, having heard the sins, must grant or deny absolution to penitents according to their disposition, and impose penance upon them according to the nature of their fault: "Our Lord Jesus Christ... left priests... as judges to whom all mortal crimes are brought... who, by the power of the keys, may pronounce sentence of remission or retention of sins, etc." Therefore, in matters concerning the opinions that pertain to the penitent's disposition, or in matters concerning the administration of the sacrament (e.g., if the confessor were to judge that he lacked jurisdiction in such a case), the penitent must abide by the confessor's judgment. But in matters concerning other opinions that relate to the general obligations of the penitents, the confessor is not a judge, nor can he obligate him to follow his opinions, imposing upon him new laws to which he was not previously bound, so that he must abandon his own opinions, which he considers probable, and perhaps even more probable, in order to receive absolution. Conversely, when the penitent has confessed his sins, and when he has sufficient grounds to legitimately follow a certain opinion, the confessor cannot, without grave injustice, deny him absolution, unless he considers that opinion to be entirely false (1). I say entirely false, for although Lugo, Layman, Sanch., and Croix with Suarez, and Carden, say that the confessor is bound to absolve the penitent, even if he considers his opinion to be false; and the same is said by Soto: "Who would say that a priest considers an opinion to be false, yet does not think that he is not permitted to absolve him, if indeed he will be excused from guilt because of probability?" Nevertheless, this must be understood, as Sanch. explains, when that opinion has already been considered probable among doctors of approved authority, and has some degree of plausibility; but not when the confessor has a principle based on his own opinion, to which he believes no suitable

response can be given, and he knows that the penitent's opinion (even if defended by some doctors) is based on a false foundation, because then, as Navar and St. Antoninus say (whose words are quoted above), he cannot, nor should he, absolve the penitent, unless he abandons his own opinion. In the aforementioned controversy, where one opinion (but that of a few) affirms that the confessor sins if he absolves a penitent who wishes to follow an opinion that does not seem entirely false, contrary to his own; the other opinion (which is the common one, and that of many ancient and modern authors) says that he sins if he does not absolve when he has received his confession, I do not see how that confessor can be safe in conscience who denies absolution to him (2). How, however, should the confessor behave in the choice of opinions, and whether he should use more rigid or more lenient ones, will be discussed below in Appendix 4, § 1, where I will speak of the prudence of the confessor. 120. Furthermore, it is asked how the confessor should behave with a penitent of whose sin he suspects, or knows, but which the penitent denies, or conceals? A distinction must be made: if outside of confession, and from (3) Lib. 6, n. 604. — (a) Ibid., see Coterum.

[*Latin ed. p. 469*]

ON THE OFFICE OF THE CONFESSOR. 457. It is certain that if the confessor possesses proper knowledge, he cannot absolve him; but if a prudent doubt exists, it is not the case that the penitent has already confessed that sin to another. However, if he merely suspects, or knows from the testimony of others, and the penitent denies it, then, in most cases, absolution cannot be denied to him at that time, since in this forum, the penitent must be believed both for and against. Nevertheless, it is not the case, as Elbel says, that if the confessor hears of a sin from witnesses of such reliable character that he is morally certain of it, he should not grant absolution; because the rule applies in cases of doubt, not in cases of morally certain facts (1). If, however, the confessor learns of the sin from the confession of an accomplice, he cannot, of course, question the penitent about it in particular, unless he has obtained special permission from the other accomplice; but he can only question him in general, and likewise, he should not repeat the questions too often, in order to avoid the risk of revelation. Nevertheless, Laym, Silvest., Navar., Sporer, and Holzm. state that it is probable that he can even use some particular questions, if those questions are commonly asked of people in such a situation, e.g., of betrothed couples who have been too familiar with each other; of servants who have defrauded their masters, etc. But a greater difficulty arises: should the accomplice be absolved, if, after using all due diligence, he remains silent about the sin? Some maintain that he should be absolved conditionally; others absolutely; but Suar., Dic. Croix, Viva, etc., hold that, when the confessor is morally certain that the penitent is concealing a sin from sacrilege, he

cannot absolve him, but he should recite some prayer in a low voice to conceal the absolution that he denies to him (2). As for the obligation that the confessor is bound by when he hears confessions, or at least when he grants absolution, and whether he will be excused in a case of extreme necessity, see what is said below in Appendix 3, on Examination, etc., nos. 11 and 121. The confessor is bound to correct any errors he has made in receiving confessions, or in granting absolution. But several distinctions must be made: I. If he has erred concerning the value of the sacrament, e.g., if he has not given the absolution, or if he has given it without jurisdiction: then, if he has erred innocently, he is not bound to warn the penitent, or to cause him any serious embarrassment; because such a warning is merely an act of charity, which does not obligate him to that extent; so say Lugo, Salmant., Sporer, Viva, Elbel, and others. This is excepted if such a confessor were a parish priest, or if the penitent were at the point of death, or in grave danger and unable to confess further. However, if he has erred through grave fault, the question is: is he bound to warn him, even if it causes him serious embarrassment? Bonac., Suar., S. Anton., and Navar. deny this; and Salm., with Vasq., Hurtad., etc., consider this probable, because (they say) it does not seem that such a precept obligates him with such a burden, since this sacrament is administered solely through charity; and because, just as the penitent is not bound to confess with such a burden, so neither is the confessor bound to ensure that such a confession is valid. However, Lugo, Tamb., Leand., Sporer, Viva, and Elbel correctly state that, although the confessor receives confessions through charity, he nevertheless accepts them, and is therefore bound afterwards, by a kind of contract, to administer the sacrament in the way it should be administered; and thus 1. the reason is satisfied. To the second point, it is said that there is a different obligation for the penitent than for the confessor; because if the penitent knew of the invalidity of his confession, (1) Lib. 6, no. 632. — (2) No. 632, see "Si autem."

[*Latin ed. p. 470*]

458 TRACT. XVI. ON THE SACRAMENT OF PENANCE. He may, at least afterward, through contrition, or through another confession, reflect upon his sin; but the confessor cannot abandon him in ignorance, given the great harm that would result (1). 122.—II. If the confessor has, through a grave fault, excused the penitent from restitution, then he is also obligated, even with some significant inconvenience to himself (provided that permission is requested), to admonish him; otherwise, by omitting the admonition, he himself is obligated to make restitution. It is understood that if he had admonished the penitent at the proper time, the penitent would already have made restitution; thus, Lugo, Castrop, Bonac, Viva, Sporer, Salm, Elbel, etc., state this generally. And here, Lugo, Bonac, and Busemb note that if the confessor had already admonished the penitent before the

penitent became unable to make restitution, then, even if the penitent has not made restitution, the confessor is not obligated to do anything; because, since the advice is merely advisory, it is sufficient that the confessor retracts it at an opportune time, as stated above in tract. 10, no. 44 and following. It is called an opportune time because, if the penitent was, at the time of confession, disposed to make restitution, and if he had been admonished, and then, after receiving the admonition, refused to make restitution, then, as Lugo states (whatever Antoine may say), the confessor himself is obligated to make restitution, because in that case, his advice has become the proximate cause of the damage (2). However, if the confessor has not gravely erred in this matter, he is not obligated to admonish him, even with some significant inconvenience, but rather with some slight inconvenience, as Lugo, Sporer, Elbel, etc., state, because everyone is obligated, with some slight inconvenience, to repair the grave damage of another (3). But the question arises whether the confessor, by omitting the admonition in such a case, is obligated to make restitution? Sanchez, Cajetan, and Navar argue against this, saying that the confessor does not compel justice, and is not obligated to give admonition, unless out of charity, which does not obligate him to make restitution. But, more commonly and better, Lugo, Sporer, Salmant, Elbel, Viva, Ariaga, etc., affirm that, because his advice (even if given without fault) continues to influence the creditor's damage, therefore, knowing the error, he is obligated by justice to remove the cause of the damage (4); just as if someone, without grave fault, had set fire to the house of a neighbor, he would be obligated by justice to extinguish it, if he could do so without significant inconvenience, as commonly stated by Lessius, Layman, Lugo, Bonac, Trul, Salm, etc. (5). 123.—III. When the confessor has not excused the penitent from restitution, but has merely omitted to admonish him, then, if he omitted to do so without fault, he is not obligated to admonish him, even with some significant inconvenience, as stated above; but he is obligated, even with some slight inconvenience, as the doctors say, in proportion to the damage to the creditor. However, if he neglected to do so through grave fault, then he will be obligated to admonish him, even with greater inconvenience. But, furthermore, the question arises whether the confessor, by omitting the due correction, is obligated to make restitution? Many hold different opinions. Some affirm this for every confessor, because every confessor (as they say) is obligated by his office to teach the penitent about his obligation; thus, Molinius, Vasquez, Navar, Sayr, Filliuc, etc. Others affirm this only for the parish priest, as Lessius and Antoine state, arguing that the parish priest is obligated to prevent his subjects from causing harm to others. But, universally, the most common and truer opinion, with Cabass, Azor, Suar, Castrop, Sanchez, Bonac, Lugo, Valencia, Coninch, Salm, Croia, etc., denies this; and the reason is because the confessor, although... (1) Lib. 6, n. 6rg.— (2) N. 621, v. Sed quid.— (3)

Ibid., v. Hoc.— (4) Ibid., v. An autem.— (5) Lib. 5, n. 994.

[*Latin ed. p. 471*]

ON THE OFFICE OF THE CONFESSOR. 459 He is bound to admonish the penitent, but solely out of charity, not out of justice; and even when speaking of the parish priest, although he is bound out of justice to admonish his subjects, this obligation pertains only to their spiritual goods, and not to their temporal goods. This holds true even if the confessor or parish priest, out of malice, neglected to admonish the penitent, so that he would not make restitution; for then there is a lack of a positive effect for the benefit of another, which is always required for the obligation of restitution, as stated above in section 10, paragraph 36 (1). 124. — Here, the great question that is debated among the doctors remains to be discussed, namely, whether the confessor, without the penitent's permission, can admonish him about an error committed in confession. We shall be brief. Generally speaking, Suarez, Petrocort, and Sporus agree, and Laym, Castrop, Bonac, Salm, etc., consider it probable, stating that this admonition pertains to perfecting the confession, which has been left imperfect. But we say, with the common opinion, that a distinction must be made: if the judgment is complete through the granting of absolution, then the confessor cannot, without the penitent's permission, speak to him about that error; for such an admonition would be a reproof of that sin, which would make confession odious; thus say Sotus, Silv, Sanch, Valent, Graf, Diana, Reginald, Megal, Croix, etc., with Lugo, who says that the contrary contradicts the common sense of theologians. However, as Croix, Stoz, and Arriaga correctly state, if the confessor has not yet administered absolution, because the judgment is not yet complete; or if he has not properly administered absolution, then he can rightly admonish the penitent, provided that no reproof of the sin occurs (2). 125. — VII. Finally, let us speak of the obligation that priests have to administer the sacrament of penance. Simple priests are not regularly bound to administer it, except in cases of extreme necessity. Parish priests, however, are bound as often as they are reasonably requested by their subjects, who make the request at an appropriate time. See what was said in section 7, paragraph 24. But here we inquire: 1. Is a simple priest or a simple confessor (because with regard to the parish priest, see what was said in section 7, paragraph 28) bound, under the penalty of mortal sin, to absolve a dying person who is in mortal sin? Sotus, Sa, Navar, Coninch deny it; and Lugo considers it probable, since he can provide for himself through contrition; Coninch makes an exception only if the dying person were laboring under such ignorance that he did not know how to elicit an act of contrition. But the truer opinion affirms, with Suarez, Tourn, Lorca, and Valent, that although the dying person may provide for himself through contrition, since this is difficult, it cannot be denied that if he is left unabsolved, he remains in great danger of damnation. Therefore,

just as in the case where a neighbor will certainly perish without your absolution, you are bound to risk your own death to absolve him; so too, in the case where he remains in probable danger of damnation, you are bound to expose yourself to probable danger of death; for in equal danger, everyone is bound to postpone his own temporal life for the eternal life of his neighbor (3). 126. — We inquire: 2. Is a simple priest bound to make himself available to hear confessions, when he sees his parishioners to be in grave spiritual necessity due to a lack of confessors? I have not found this doubt discussed with any author who treats of moral matters; only (1) Book 6, paragraph 621. — (2) Paragraph 625. — (3) Paragraph 624.

[*Latin ed. p. 472*]

460. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. A certain small book came into my hands, entitled "The Parish Priest of Villa," page 308, whose author, the Reverend Joseph Jorio, whose doctrine and piety are sufficiently demonstrated by the various works he has

published; from it, I transcribe the following in Italian: "He who possesses skill in hearing confessions, and observes a lack of confessors in his town, and sees that this sacrament is either not frequently administered, or is administered poorly, is obligated to administer it himself. And, if he has not yet made much progress in years, he is obligated in conscience to make himself capable." The same author cites the authority of Father Pavoni, of the Society of Jesus, a very learned and pious man, who writes in his Italian works: "My duty, as I am called a priest, is to obey my superior, and when he commands me to hear confessions, I must not hinder myself; for my superior can command me to do this, and I have no reason to keep my talent idle, etc." Furthermore, I owe it to my bishop to request from him the faculty to hear confessions, when I observe that the people are in great need because of the lack of confessors." And indeed (I add here some reflections that I have pondered on this point, to which few priests pay attention), it is certain that priests are chosen by God not only to offer sacrifice, but primarily to be established for the salvation of souls: just as the divine Father sent His Son for the salvation of the world, so Christ the Lord established priests in His place to fulfill a ministry on His behalf: "As the Father hath sent me, so I send you forth." John 20:21. Therefore, priests are called, now the light of the world, now the salt of the earth, now God's coadjutors. Therefore, also, the Council of Trent, Session 23, chapter 14, prescribes that those who are to be promoted to the priesthood should first be proven suitable "to teach those things which it is necessary for all to know for salvation, and (note) to administer the sacraments..." And St. Thomas (1) says that the Lord instituted the order of priests in His Church for this purpose, so that they might administer the sacraments to others: "And therefore He established order in it, that some might give the sacraments to others." But the principal obligation of priests is concerning

the administration of the sacraments of the Eucharist and Penance; therefore, a double power is conferred upon them, namely, to offer sacrifice and to absolve from sins. And it should be noted that the Lord poured forth the Holy Spirit upon the priests, especially to absolve from sins, as we read in John, in the passage cited above, verses 22 and 23: "As the Father hath sent me, and I go forth. When he had said this, he breathed upon them, and said to them: Receive the Holy Spirit. Whose sins you remit, they are remitted to them." Therefore, since it is the principal duty of priests, and one of the main reasons why God chooses someone for the priesthood, I say that a priest is obligated to make himself capable of this, at least when he recognizes a need because of the lack of others, lest he be rebuked by the Apostle for having received grace in vain... 127. With this established, how will that priest be excused from sin who, through his negligence, fails to hear confessions, or to make himself capable of hearing them, when he sees a grave need that presses upon his town? I do not know how this man can escape the Lord's rebuke, and be free from the punishment threatened to the slothful servant who hides the talent given to him for business, as is found in Matthew 25 and following verses, a passage which the commentators (Cornelius a Lapide, Calmet, and Tirinus, along with St. Ambrose) (1) Supplement, question 34, article 1.

[*Latin ed. p. 473*]

ON THE RESERVATION OF CASES. 461: It is explained that those who are able to care for the salvation of others, yet neglect it, are culpable: "Let those take note (says Cornelius) who, by the talents, learning, and other gifts given to them by God, do not strive for their own and the salvation of others, either through laziness or fear of sin; for the Lord will demand an account from them on the day of judgment." The Lord's threats against negligent priests are filled with terror: "If, when I speak to you of wickedness, you die in wickedness, you shall not have spoken; if you do not speak to warn the wicked man, if the wicked man dies in his sin, his blood I will require at your hands." (Ezekiel 33:8). Nor should such priests say that they sufficiently fulfill their obligation if they assist souls in other ways, namely, by instructing, correcting, and praying; I say that this is not enough, because they are bound to help those in enough in that which is necessary for their salvation. If a brother needs food, it is not enough to provide him with clothing. It often happens in towns that many do not need instruction or correction, because they are already sufficiently instructed and corrected, but there is no priest to hear their confessions. It is not valid to say that the duty of hearing confessions is an act of charity, and that charity does not obligate with such inconvenience, because it is a labor that must be undertaken to acquire the knowledge required for the administration of the sacrament of penance; for it is answered that, although such an act is charity, it is nevertheless a duty that does not arise from a simple motive of

charity, but from the proper priestly office (as has been said), to which this duty is attached by divine institution, and to which the priest must fulfill, when the necessity of the people demands it. Finally, no one can excuse himself by alleging his insufficiency and weakness; as for insufficiency, given the things said before, he is bound to study and to make himself suitable; as for weakness, who would deserve to be excused, namely, with a sense of humility, when he hears what St. Francis de Sales says. The Saint calls the false humility of those who refuse to dedicate themselves to the salvation of souls, under the pretext that they know their own weakness. He says that all this is a trick of self-love and perverted humility, by which one pretends to color one's own negligence with a specious pretext. He adds that God, when He grants us some talent, intends that we use it: therefore, he truly shows himself humble who uses it and obeys. Nothing should be attempted by the proud, as if relying on themselves; on the contrary, the humble should be of great spirit, because they do not rely on their own strength, but place their hope in God, to whom it pleases to exalt His omnipotence in our weakness; and therefore, he concludes that the humble can undertake everything.

CHAPTER VII. ON THE RESERVATION OF CASES. 128. Reservation is a restriction of jurisdiction. 129. The ignorant are not excused from reservation, although they are excused from censure. The difference between papal and episcopal reservations. 130. He who can reserve, etc. Concerning the reservations of religious orders. 131. Concerning unjust reservations; and whether a superior can absolve and remit to another for those who have not been reserved, etc. 132. Whether venial sins, or internal sins, or sins not consummated, etc. 133. When an inferior can absolve, etc., and whether the penitent should present himself, etc. 134. If the power is unjustly denied, etc. If it is denied by a regular prelate. 135. Concerning foreigners, when reservation is a fraud. 137. Whether he who sins in his homeland can be absolved outside of it by one who has the power. 138. Whether he who sins outside of it can be absolved in his homeland? And whether he who sins in his homeland can be absolved from censure outside of it? And whether he who sins outside incurs the censure reserved there. 139. He who receives absolution in good faith from a simple confessor. 140. He who forgets about the reservation with a superior, etc. 141. Whether from a confession...

[*Latin ed. p. 474*]

462 TRACT. XVI. ON THE SACRAMENT OF PENANCE. Whether absolution is validly administered in cases reserved to a higher authority, etc. — 142. Whether a confessor can validly absolve a case that is dubiously reserved. — 143. What happens if someone realizes after confession that their case was reserved. — 144. What if someone sins in the confidence of a dispensation? — 145. Whether a dispensation extends to sins committed

after it is granted. — 146. Concerning the faculties of bishops and religious superiors to remit sins. 128. — RESERVATION OF CASES is defined as "the denial of jurisdiction" concerning a particular sin. Hence, it should be noted that 1. the common opinion is that of Sanch., Castrop., Holzman, Tambur., Wigandt, Coninch., Antoine, Fagnan, Croix, and others (against Ronc., Salm., Ciera, etc.), that those who are ignorant of a reservation are not excused from it, even if they were invincibly ignorant of it; because the reservation is not a penalty that applies to sinners, as the opponents claim, but is a restriction of jurisdiction with respect to confessors; and this is explicitly stated by the Council of Trent, Session 14, chapter 7, where it says: "No absolution should be given by a priest to anyone over whom he does not have ordinary or delegated jurisdiction." Therefore, it follows that priests cannot grant absolution in reserved cases. It cannot be said, as Salm. and Ronc. claim, that although the reservation directly concerns confessors and limits their power, nevertheless the purpose of the reservation is to benefit the penitent, so that they may be deterred from reserved sins; therefore, since the adequate purpose is lacking in the ignorant, the reservation also ceases. But it is answered that the purpose of the reservation is not only to deter the faithful from reserved sins, but also (as Fagnan and others say) to ensure that those who have fallen away receive penances, admonitions, and remedies that cannot be properly applied by others, but only by superiors, who are always considered more prudent and more suitable, as expressed in the Council of Trent: "It seemed good to Our Holy Fathers that certain more grievous and serious crimes should be not absolved by anyone, but only by the highest priests." From this, it is clearly deduced that even in the case of the ignorant, the adequate purpose of the reservation does not cease (1). 129. — From this, it follows, as the aforementioned authors commonly say, in agreement with our opinion, that even in cases reserved by bishops, to which a censure is attached, the ignorant may be excused from the censure if, in their case, the contumacy necessary to incur the censure is lacking; nevertheless, they are not excused from the reservation; for this is the difference between papal and episcopal cases, that papal cases (with the exception of two that are reserved without a censure, namely, the accusation of solicitation against an innocent priest, as is stated in the bull *Sacramentum* of Benedict XIV, and the reception of gifts from religious, as mentioned above (tr. 13, n. 8, at the end, primarily are reserved because of a censure. And therefore, the ignorant are excused from them with respect to the reservation, as commonly taught by Suarez, Castrop., Sanch., Laym., Molin., Cajet., Gonet, Wigandt, Abelly, Salm., Croix; Ciera, Viva, etc. (contrary to P. Concina, whom I find to be the only one opposed): while they are certainly excused from the censure, as we will say in tr. 19, n. 8, and as expressed in chapter 2, de constit. in 6 (2). Conversely, in episcopal cases, because the sin itself is primarily reserved (although a censure may be imposed), therefore, just as the ignorant are not excused

from the sin, so also are they not excused from the reservation; because, as stated, with respect to the reservation, the confessor's jurisdiction over that sin is completely removed (3). 130. — It should be noted 2. that all superiors who possess ordinary power can reserve cases, such as the Pope, bishops, and prelates of religious orders.

(1) Lib. 5, n. 581.

(2) N. 580.

(3) N. 581. Dubit. 2.

[*Latin ed. p. 475*]

ON THE RESERVATION OF CASES. 463. Both superiors and those who possess authority as if they were bishops, as declared by the Holy See in the Council, can reserve cases; however, this does not apply to parish priests, for at least by custom, this faculty has been abolished for them (1). It is said that superiors of religious orders can also reserve cases; but as Clement VIII decreed, they can only reserve eleven cases, and no more, without the consent of the general chapter for the entire order, or the provincial chapter for the province. These cases were determined by Clement, and are as follows: 1. Apostasy. 2. Nocturnal and furtive departure from the monastery. 3. Sorcery. 4. Mortal sin against poverty. 5. Mortal theft of the monastery's goods. 6. Carnal sin consummated in act. 7. Perjury in court. 8. Cooperation in the abortion of a living fetus, even if the act is not completed. 9. Killing or seriously injuring any person. 10. Forgery of the hand, or seal of the monastery's officials. 11. Malicious obstruction, delay, or withholding of letters from superiors to inferiors, or vice versa. Busemb. affirms that superiors can inflict censure on another for a case other than the one reserved, but it is more commonly and probably denied by Lugo, Sanch., Diana, and Holzm. (2). 131. — Note 3. Reservation cannot emanate without a just cause; therefore, some say that an unjust reservation is invalid, because the Council of Trent gave this faculty to superiors to reserve cases for edification, not for destruction; but the more common and truer opinion, with Laym., Suar., Lug., Holzm., Ciera, etc., says that it is gravely illicit, but valid, because just as a superior can refuse to grant a dispensation for certain cases, so too he can reserve it (2). As for whether a superior can absolve someone from reserved cases, and remit the penitent to an inferior for other matters, some admit this due to custom; but this custom is most commonly denied by Salm., Cano, Nav., Laym., Castr., Salm., Croix, etc. Only these authors permit this in a very rare case of great necessity, for example, if the superior were burdened with a very serious matter, and the penitent were in need of communicating, and showed resistance to confessing his sins twice (4). 132. — Note 4. It is also possible to reserve venial sins, as commonly admitted by Suar., Lugo, Ciera, Holzm., Conc., etc., contrary to Vasq.; because although there is no obligation to confess venial sins, nevertheless they cannot be remitted through the sacrament except by the

jurisdiction of the Church; therefore, just as the Church can deny this, so too it can limit it (5). And likewise, internal sins can be reserved, as also commonly said by Sot., Silv., Suar., Croix, Antoine, etc. It does not contradict this to say that the Church does not judge about hidden sins; because it is answered that the Church, by reserving, is not judging about internal sins, but is judging about the absolution of those sins, which is an external act (6). Furthermore, prudence requires (and this is borne out by experience) that only mortal sins, and those that are more serious (according to the norm given by the Council, which says that certain crimes are atrocious and serious), and those that are externally grave, should be reserved; therefore, Lugo, Sanch., Suar., Bon., Gran., Ciera, etc., commonly teach that a light sin, insofar as it is external, does not fall under reservation, even if it was grave internally; because superiors do not intend to reserve except sins that are externally grave, and moreover consummated, and perfect (1).

(1) Lib. 6, n. 578, — (2) N. 553. — (3) N. 572. — (4) N. 595. — (5) N. 582. Dubit. 1. — (6) Dubit. 2.

[*Latin ed. p. 476*]

464 TRACT. XVI. ON THE SACRAMENT OF PENANCE. Its specific cases. Hence, it is rightly stated by Father Mazotta that incest and sodomy committed outside of marriage are not reserved sins, nor is sodomy committed between a male and a female, as also state Silv., Az., Bon., Tourn., etc. (1). 133. — Note 5. If the superior is unavailable, the inferior can, for a just cause, grant absolution from reserved sins, e.g., to avoid scandal, or to remove an infamous reputation, or to fulfill the Paschal precept, or if the penitent must continue to suffer in a mortal sin because the superior is far away, as commonly taught by Suar., Laym., Castr., Conc., Wigandt, Salm., Ciera, etc. (2). This is called "indirect" because, once the impediment is removed, the penitent is obligated to present himself to the superior to receive direct absolution from reserved sins; the reason is that, as declared by the Council of Trent (Session 14, Canon 7), confessors cannot, outside of the article of death, grant absolution for reserved sins. Therefore, even if the impediment were perpetual, if the case is one of the bishop, one must always return to the bishop for direct absolution, once the impediment has ceased. And if the case is one of the Pope, and the impediment is perpetual, and the penitent cannot even go to the bishop (as he should, since he cannot reach the Pope), even if he receives absolution in a case of necessity from a simple confessor, he must at least present himself to the bishop (3); see what is said below in Tract. 20, no. 45. And it should be noted that, if the sin is a reserved sin with a penance attached, by simply presenting himself, he incurs the penance again, as stated in no. 96. Now, if someone has reserved sins, and is in a situation where he must confess, and no one is present who has the power to hear confessions, is he obligated to confess to a simple confessor? And if he confesses, must he tell him both reserved and non-

reserved sins? See what is said in Tract. 15, nos. 27 and 28, where we stated that he is obligated to confess those sins, at least if it is necessary, so that the confessor can form a certain judgment about his disposition; therefore, we add here that, if the confessor asks, he must reveal everything; for, as rightly observed by Lugo, although the penitent is not obligated to reveal any particular sin on his own, he is obligated to disclose it when asked by the confessor, who has the right to know the entire conscience of the penitent, both to know his disposition and to apply remedies, in which two things he is a true judge (4). But can any confessor absolve a dying person from papal reserved sins, in the presence of a bishop? See no. 97. 134. — Note 6. Although the superior unjustly denies the faculty, the inferior cannot absolve from reserved sins, as commonly taught by Sotus, Suar., Laym., Lugo, Ciera, Salm., etc., whatever Henriq. and Diana may say; for just as an unjust reservation is valid (as stated in no. 131), so too is an unjust denial of the faculty (5). Moreover, bishops certainly sin gravely who unjustly deny the faculty; and they also sin against justice, since, through such a denial, the souls of their subjects suffer notable harm: so commonly taught by Lugo, Suarez, Coninch., Quintanad., Facund., Diana, and Ciera, following St. Thomas (6). On the other hand, the superior can always justly deny the faculty, until the penitent provides him with the necessary information to repair public scandal or harm; otherwise, he can be absolved by no one as being indisposed; Suar., Lugo, etc. (6). (1) Lib. 6, no. 582, Doubt 3. (2) No. 585. (3) Ibid., Doubt 1. (4) Ibid., Doubts 2 and 3. (5) No. 586, ad 4. (6) No. 586, ad 6.

[*Latin ed. p. 477*]

ON THE RESERVATION OF CERTAIN SINS. 465 It should be noted here concerning religious orders that, 1. as stated in the bull of Urban VIII, Clement VIII declared that if a superior of a religious order denies a confessor the faculty, the confessor can, in this instance (as the bull states), absolve the penitent, and this is commonly asserted by the Doctors Lugo, Gabriel, Avers, Bus, Salm, and P. Viva, who say that "in this instance" means as often as the superior unjustly denies the faculty. And the same is said by Pelliz. in Diana, Quintanad. if he denies it to another religious who is more learned and prudent, even if he is not appointed; and the same is said by Pelliz. if it is denied to the same penitent. It should be noted 2. that, due to the privilege granted to the Minor Friars, all religious can once receive absolution from reserved sins through their confessors, even if they lack the faculty regarding reserved sins, as stated by Suar. in Diana and Rodriq. (1). 135. — Note 7. concerning pilgrims: pilgrims are generally judged, as far as the reservation of certain sins is concerned, according to the laws of the diocese in which they are found. Therefore, if a sin is reserved only in that diocese, a pilgrim cannot be absolved by a simple confessor, even if that sin is not reserved in his homeland; this

is held by Suar., Lugo, Bonac., Conc., Wigandt, Ciera, Diana, Salm, etc., and is supported by a declaration of the Holy See. The reason is that, today, pilgrims are not absolved based on the presumed consent of their ordinaries, as opponents claim, but based on the will of the universal Church. Conversely, the reservation does not apply to penitents, as stated in number 128, but only to confessors; therefore, they cannot absolve from those sins only for which their faculty is limited (2). Conversely, if a sin is reserved only in the homeland, but not in that diocese, a pilgrim can rightly be absolved by any confessor, as rightly taught by St. Antonin, Cajet., Lugo, Suar., Bonac., Cabass., Conc., Roncaglia, Mazzot., Salmant., etc., because this is a custom commonly approved by bishops and pontiffs, namely by Eugene IV (as testified by Lugo), and especially by Clement X in his bull Superna, issued on June 21, 1670; provided (as Clement limited it) that the penitent does not depart from his homeland in order to circumvent the reservation: "But (these are the words of the Pope) a religious confessor in a diocese in which he is approved, can absolve those who come from another diocese from sins reserved in that diocese, but not from sins reserved in the diocese where the same confessor is approved, unless those same penitents are known to have migrated to a foreign diocese in order to obtain absolution." The bull speaks properly of confessors of religious orders, as is observed; but it is also understood to apply to secular confessors, as rightly stated by Croix, Viva, and Ronc., and as declared by the Holy See (3). 136. — How should that clause "in order to circumvent the reservation" be understood? There are many and diverse opinions. P. Mazzot., with Tamb. and others, understands it when the case is brought before a contentious forum; but this explanation is not conclusive, since the Pope speaks of the sacramental forum, not of an external one. The Bishop of Milan understands it when the penitent has committed the sin in the expectation of absolution, but not when he departs in order to be more easily absolved there; but I cannot agree with this explanation either: the Pope speaks not of those who sin, but of those who migrate in order to circumvent the reservation. Others offer other applications; but (1) Lib. 6. n. 586 ad 5. — (2) N. 588. — (3) N. 589. v. Idque. 30

[*Latin ed. p. 478*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE. It is commonly and probably held by Lugo, Roncaglia, Viva, and by the new Instruction for Confessors, along with Porcella and Fagund, that when a penitent departs with the sole and principal intention of being more easily absolved elsewhere, and thus to avoid the judgment of his own pastor, fraud is truly present, because the law is then made to appear illusory. Indeed, the law of reservation is circumvented when the penitent principally migrates from his homeland in order to be more easily absolved in another diocese. Con-

versely, he does not migrate fraudulently who sets out for some other purpose, for example, to gain indulgences, or to conduct other business, or to confess more quickly or with less inconvenience, or to find a confessor he does not know, or a more prudent one from whom he hopes to obtain a greater peace of conscience (1).

Roncaglia states that a penitent who departs with the intention of avoiding the judgment of his own pastor cannot, in another diocese, be absolved even by confessors who have the power to absolve reserved cases, because in such a case, he would be migrating fraudulently (2). However, Milante and Viva, along with Suarez, Navar, Lugo, and Bonac, and with the common opinion of the doctors who say that if a case is reserved in both dioceses, a pilgrim can freely be absolved by one who has the power; and this opinion does not seem improbable, because it truly does not seem that the penitent is committing fraud against the reservation when he goes to a confessor approved even for reserved cases (3).

Furthermore, Manzi states, and Roncaglia also agrees, that one who committed a reserved sin outside his homeland cannot be absolved in his homeland with the intention of being absolved outside later. But even in this matter, I hold the opposite view, because the sinner would not be said to have departed fraudulently to avoid the reservation, but rather to avoid incurring the reservation (4).

Conversely, Castr, Suarez, Coninc, and the Council (whatever others may say) rightly state that a penitent who committed a sin in a monastery of regular canons, even if exempt, cannot be absolved in his homeland by a confessor who has limited jurisdiction over such a case, because, although such monasteries are exempt even in terms of location, as stated in Tractate 2, number 29, nevertheless, the confessor cannot absolve him in this case, because his jurisdiction is limited. The same applies for the same reason, if the penitent committed a sin outside the diocese, even if such a case was not reserved there. Thus, we also say with Roncaglia and Wigandt, against others, that a penitent who is subject to a censure reserved in his homeland cannot be absolved outside the diocese by a simple confessor, because the simple confessor has the power to absolve from censures only according to the canons, as stated in c. Nuper, de Sent. excomm. in 6, where it is expressly stated that confessors cannot absolve from reserved censures (5).

We also say with Avers and Mazzot that if a pilgrim commits a sin in another diocese where that case is reserved, he cannot be absolved there by a simple confessor, because there, by reason of the offense, he has already incurred the reservation; and because the confessor (as stated in number 135) cannot absolve an external person, unless according to the limits of the jurisdiction granted to him by his ordinary. It should be noted, however, that such a pilgrim has already incurred the reservation, as stated, but not the censure attached to it, as rightly stated by Suarez, Silv, Conc, Salm, Avil,

Sayr, Maz, etc., against some; for in cap. A nobis, de Sent. excomm. in 6, it is stated that only subjects are included under the general excommunication for future offenses. And the reason is that a censure is not incurred except by those who are not merely subjects (1) Lib. 6, n. 589, v. Quemodo. — (2) Ibid. — (3) N. 557. — (4) N. 589, v. Quemodo. — (5) N. 590.

[*Latin ed. p. 479*]

ON THE REMOVAL OF RESERVATIONS. 467. There are those who are reserved, but also those who are contumacious; a penitent, even if subject to a reservation due to sin, cannot, however, be called contumacious (1). 139. — It is questioned: 1. Whether a penitent who, in good faith, confesses a reserved matter to a simple confessor, or if he forgets it, is validly absolved? Antoine denies this, saying that a simple confessor, since he has no power over reserved matters, cannot even indirectly absolve from them. However, the more common opinion affirms this (as Antoine himself admits), citing Suar., Cast., Lugo, the Council of Salm, etc., and it is also more probable, because a simple confessor, although lacking jurisdiction over reserved matters, does not lack it over non-reserved matters; therefore, non-reserved matters are directly absolved, and reserved matters are indirectly absolved; for mortal sins cannot be absolved unless all are absolved together, since one cannot be remitted without the other being remitted; and since this opinion is common and highly probable, if it were false, at least the Church provides for jurisdiction, as stated in n. 91 (2). 140. — It is questioned: 2. Whether a penitent who has confessed to a superior and has forgotten a reserved matter, can afterwards be absolved from it by anyone? The first opinion affirms this, citing Lugo, Sanch., Cast., Ciera, Salm, etc., saying that the superior, in granting absolution, intends to also free the penitent from all bonds of reservation, as is also stated in n. 69, concerning the jubilee. The second opinion denies this, citing Suar., Silv., Angelo, Con., Antoine, etc., because, as stated, in order to remove the reservation, it is necessary that the sin be brought before the judgment of the superior, so that he may grant the penitent appropriate penance and medicine; therefore, the removal of the reservation should not be presumed unless there is a special reason to believe that the superior intended to remove it. The reason, however, is very valid; in this matter, this opinion seems more probable, in contrast to the opinion given in n. 69, because there, in the case of the jubilee, the penitent is granted the privilege of being absolved by any confessor. Nevertheless, I cannot consider the first opinion improbable, unless there is a special presumption that the superior withheld absolution, even if he heard the confession, including the reserved matter (3). 141. — It is questioned: 3. Whether the reservation is removed by an invalid confession made to a superior? The answer is: if the confession is invalid, but excusably, it is commonly affirmed by Cajetan, Suar., Lugo, Wigandt, Castrop, Bonac., Ronc., Coninc., Holzm., Croix, and Salm (contrary to Concin), because,

on the one hand, the superior actually and absolutely intends to free the penitent from sin and from the reservation; and on the other hand, the penitent has already brought his sin before the judgment of the superior, and has already received from him the remedies and penance to which he is always bound to submit; although he may later realize that the confession was invalid, as noted by Bonac. It cannot be said that the superior, and even less a delegate, removes the reservation unless through absolution; because, with regard to the superior, he can perfectly grant it outside the sacrament; and in that case, it is perfectly presumed that he intends to grant it; and with regard to the delegate, although he cannot remove it without absolution, nevertheless, it is judged that he can remove it by the will of the superior, or at least by virtue of a custom approved by the common authority of doctors (4). A greater difficulty arises when the confession is sacrilegious; then, Holzm., Viva, Ronc., Conc., and Croix absolutely state that the reservation is not removed, because it is not presumed that the superior intends that the subject should receive a benefit from his sacrilege.

(1) Lib. 6. n. 591. — (2) N. 596. v. Quær. L. — (3) N. 597. — (4) N. 598.

[*Latin ed. p. 480*]

468 TRACT. XVI. ON THE SACRAMENT OF PENANCE.

It is maintained that the reservation does not apply. But equally, Suar., Lugo, Castrop., Bonac., Vasq., Filliuc., Salmant., Cajet., Conin., and others commonly assert this, and not improbably, because there is a different end to confession, which is to remit sin; another end to reservation, which is to subject the sin to the judgment of a superior, and this is already achieved; and although the superior, by way of interpretation, might not wish it, nevertheless, he already intends to remove it. Conversely, it should be said (as Lugo, Suar., and Vasq. correctly point out) if the penitent culpably conceals a sin, or, as Suar. adds, if he confesses a reserved sin without the intention of avoiding it or of satisfying for penance, provided that he does not subsequently change his will (1). And conversely, this also applies to a sacrilegious or invalid confession made during a Jubilee, as mentioned in n. 67, because a different reason applies there.

142. Question 4: When a penitent is uncertain whether or not he has committed a reserved sin, can he be absolved by a simple confessor? The answer is: When there is doubt about the fact, namely, whether the sin was venial or mortal, and whether it was a mortal sin or not, then, with all (except Wigandt), it is held that he can be absolved; thus, Suarez, Sanchez, Lugo, Concina, and others; because reservation, being odious, must be strictly interpreted; hence, it should be understood to apply only to sins that are certainly grave and consummated, as mentioned in n. 132. However, if there is doubt about the law, namely, when doctors dispute whether a certain sin is

or is not reserved to a confessor; in this case, Conc. Wig. and Antoine with Armil. deny that the confessor can absolve when there is doubt to him. But even in this case, the aforementioned authors, and commonly also Filliuc., Hurtadus, Bonac., Sa, Henriq., Anaclet., Elbel, Viva, Spor., Salm., etc., assert this, and this applies whether the doubt is positive or negative, because the same reason applies in both cases; while there is doubt, the confessor possesses the power to absolve. Furthermore, since this opinion is common and probable, the Church provides a remedy in the event that it is false. It may be objected that Clement VIII, in his decree, forbade privileged confessors to absolve from cases reserved by the Bull of Communion, even if they were dubiously reserved; and that, likewise, in the Extravagantes, it is forbidden to bishops to absolve from a serious assault on clerics, even if it is doubtful whether it is grave or light; but it is answered that both of these prohibitions rather confirm our opinion: therefore, we say that, in other reserved cases, except for these two, absolution can rightly be given, for the exception confirms the rule. But it should be noted that Clement (as Ronc. and Antoine report) in 1602, amended the aforementioned decree, removing those words "even if dubiously reserved" (2). Sanchez, Bonac., etc., limit our opinion in the case in which the reserved sin is judged in the external forum; but this limitation is also rightly refuted by Lugo, Escob., Spor., Tamb., and Salm., because the external forum differs from the internal forum. In the former, presumption is considered, and faith is not given to the penitent. But in this sacrament, the penitent is completely believed, unless the contrary is proven (3).

143. Question 5: If someone has confessed a dubiously reserved sin to a simple confessor, is he completely released from the reservation, even if he later knows for certain that it is reserved? P. Conc. denies this; but Lugo, Dicast., Aversa, Spor., Viva, Sanchez, and Salm., among others, commonly affirm this; because when a sin is confessed as dubiously reserved, he is directly absolved (as P. Conc. himself admits), and therefore the reservation is directly removed (1).

(1) Lib. 6, n. 589, v. Quær. IV.

(2) N. 660, v. Quær. I.

(3) Ibid., v. Talmittant.

[*Latin ed. p. 481*]

OF THE SEAL OF CONFESSION. 469 Another case arises, as we stated previously in number 34, when the penitent confesses a sin as doubtful, and then remembers that it was certain; for then he is obligated to confess it again as certain, in order to complete his integrity, and to inform the confessor of what truly occurred in his conscience; but in our case, once the sin has been absolved, the reservation, as stated, has been removed; therefore, the obligation to seek out the superior ceases, so that he may be released from it (1). 144. It is inquired whether one can be absolved

from reserved sins who has committed a sin in reliance on a dispensation? Some have doubted; but the more common opinion affirms, with Sanchez, Lugo, Fillon, Bona, Molfetta, Salmeron, and others. The reason is that, even if the superior does not wish the subject to take advantage of the dispensation, nevertheless he does not intend to deny absolution to the penitent who truly repents of his sin and intends to avoid it. We have said the same regarding the Jubilee, number 70 (2). 145. It is inquired whether a dispensation granted for reserved sins can be extended to sins committed after the dispensation? It is answered that it does not extend if the dispensation is granted only for specifically named sins, or for a determined number; otherwise, it does extend if it is granted indefinitely; thus, Lugo, Roncaglia, Bonanni, Passerini, Prepositi, Salmeron, and others, hold this view; however, it is excepted if the penitent, to whom the dispensation has been granted, commits another sin after a considerable time, for example, after a month, or if the dispensation was granted with a view to a particular feast day (3). 146. Regarding the faculties of bishops to absolve from papal sins that are hidden and forbidden, see what is said below, treatise 20, numbers 36 and 38, and regarding the faculties of religious, see there, from number 95 and following. CHAPTER VIII. OF THE SEAL OF CONFESSION. 147. The obligation of the seal. 148. Those who are bound by the seal. 149. Whether he who is required by the confessor, with the penitent's permission, is bound by the seal. 150. Whether one consulted by the penitent himself is bound by the seal. 151. Whether one who reads the confession document is bound by the seal. 152. The following fall under the seal: I. Even minor sins. II. Sins of an accomplice, but the confessor may be admonished about this with the penitent's permission. III. The object of the sin; IV. Penance; V. Circumstances, but not irrelevant ones; VI. Revelations and virtues, when, etc.; VII. Scruples. 154. VIII. Natural defects. 155. The case of a deaf penitent. 156. Cases in which the obligation of the seal is not present. Regarding the penitent's permission, and whether it is permissible to admonish within the confession without asking the penitent for permission. 157. Cases in which the seal is violated. 1. One who would say it in a monastery, etc. 158. One who would say it in a town. 160. If the penitent reveals knowledge of the confession to the governing authority. 158. One who would say it under duress, etc. 161. If the penitent reveals knowledge of the confession due to a guilty conscience. 161. Whether the confessor can protect himself from harm, etc. 162. Whether a copy of the confession document can be provided, etc. 163. If the penitent threatens death, etc. 164. Whether it is permissible to use probable opinions, etc. 147. The sacramental seal imposes the obligation of silence regarding sins and all other things revealed in confession in order to obtain absolution, even when speaking with the penitent himself: and this obligation is so strict that the confessor, in no case and at no time, can reveal these things, even if he were about to die. To proceed more clearly on this matter, which is very

important, let us first note those who are bound by the seal; secondly, what falls under the seal; thirdly, cases in which the seal is violated; fourthly, cases in which the seal is not violated. 148. And first, let us note those who are bound by the seal. Generally speaking, all those to whom knowledge of the confession has in any way come are bound by the seal. But speaking in particular, the following are bound: 1.

[*Latin ed. p. 482*]

470. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. A confessor who, by breaking the seal, commits three sins, incurs sacrilege due to the injury inflicted upon the sacrament, injustice towards the penitent, and, if the sin is not public, detraction. If a confessor were questioned about sins heard, he can rightly affirm, even under oath, that he heard nothing; for he has no knowledge, communicable to others, of all that he receives in confession; thus, commonly, St. Antoninus, St. Layman, Wigand, Antoine, and others, along with St. Thomas (1), who says: "He can swear that he does not know what only God knows." And this is true even if, as Lug, Vasquez, Layman, Croix, etc., say (contrary to the Council), the confessor was required to answer not as a man, but as a minister of God: or if he was required to anwer without equivocation, as Lugo, Holzmüller, Croix, etc., say; for then he answers without equivocation, that is, it is understood without any ambiguity that he can lawfully omit; for the questioner has no right to demand that he answer without that ambiguity which cannot be omitted without sin. However, if a confessor is asked whether he has granted absolution to the penitent, he must answer: "I have performed my duty." But sometimes, saying this can even suggest the suspicion of a denied absolution; therefore, in all such questions made rashly, it is always better to respond by rebuking: "Are such questions to be made?" If, however, it should happen that the confessor has not absolved, and a cleric asks whether the penitent intends to receive Holy Communion? The confessor must answer: "Ask him whether he wishes to communicate" (2). II. He is also bound by the seal of the prelate who was asked about permission for reserved cases, as rightly say Suarez, Lugo, the Council, and Salm. (contrary to Castrop and Vasquez); otherwise, an odious confession would be returned. III. Interpreter. IV. He who hears something (even unintentionally) from the penitent in relation to confession, as say common commentators Bonaventure, Layman, Castrop, Salm., etc., contrary to Soto. Likewise, he who hears a sin confessed aloud, but in some necessity, such as shipwreck, conflict, etc.; otherwise, if the penitent only wishes to publicly confess for his own shame; Castilian, Coninch, Salmant., etc. V. All those to whom something sacrilegious has been revealed; commonly, Layman, Holzmüller, Salm., the Council, Spor. etc. VI. A layman who, by deceit, pretended to be a confessor; Suarez, Lugo, Ronc., and others, commonly contrary to Soto and Vasquez. VII. He who has written down an-

other's confession. Some add that the penitent is also bound by the same sacramental seal to keep silent about what the confessor says to him; but this is denied by the common opinion, and the true opinion is with Layman, Wigand, Suarez, Castrop, Bonaventure, Salm., Holzmüller, Bus., etc., because truly the seal is instituted for the benefit of the penitent. However, all agree with Holzmüller that the penitent is bound by a natural bond of secrecy to keep silent about what the confessor has said to him, which, if divulged, could harm him; and I add that this bond is stricter than a simple natural one; because advice given by others is spontaneous, but that given by the confessor is given by duty and obligation; therefore, I believe that it could rarely happen that the penitent could lawfully reveal such a secret to the detriment of the confessor (3). 149. — It is asked: 1. Is a doctor to whom a confessor consults about the penitent's permission bound by the sacramental seal? Castrop, Vasquez, Tamb., Diana, etc., deny this, saying that in such a case, knowledge of the sin is not obtained from confession, but from a manifestation made with permission, and consequently, the name (1) In 4th Dist., art. g., 3rd question, 1st article, 5th. — (2) Book 6, article 645. — (3) N. 647.

[*Latin ed. p. 483*]

ON THE SEAL OF CONFESSION. 471 The penitent; therefore, just as one is not bound by the sacramental seal who is consulted by the penitent himself, so neither is the penitent bound by the name of the one who requests the confession. However, it is more commonly and plausibly asserted by Silv. Nav. Lugo, Laym. Bon. Spor. Croix, Petrocor. Roncaglia, Mazzot., and Viva, and expressly taught by St. Thomas (1). The reason is that the very institution of the sacrament requires that the obligation of the seal remain for everyone to whom knowledge of the sin is imparted for the sake of confession, otherwise confession would always be rendered odious. Tamb. objects that the penitent, in granting permission, is presumed to have wished to remove that knowledge from the obligation of the seal; but we respond with Lugo and Spor. that, on the contrary, it is presumed that any penitent, in granting permission, gives it with a greater restriction than they can impose, since we are dealing with something as odious as the proclamation of their sins (2). It must be noted here that, notwithstanding the seal, the doctor who gave the advice, until the judgment is perfected by absolution, may freely speak of that case with the confessor and with others convened for consultation, because it is morally understood that permission has been given in this way. It must also be noted that if it ever happens that two confessors seek advice from the same doctor regarding the penitent's permission, Lugo says that the doctor cannot speak with the second about the circumstances heard by the first, and unknown to the second; but, with all due respect to that learned doctor, I think the opposite, because when the penitent gives permission to the second confessor to

speak about the case with the same consultant, it is certainly to be believed that the penitent desires nothing other than sound advice, so too it is certainly to be presumed that they consent to the consultant saying whatever they know, and whatever should be said, in order to provide good advice (3). 150. — Question 3. Is the one whom the penitent himself consults about a confession that others intend to make bound by the seal? Tambur., Conc. Spor. Antoine, Croix, Diana, etc., assert that, since it is necessary for penitents to seek advice in order to confess properly; if the consultant were not bound by the seal, confession would be rendered odious. But Suar., Castrop., Avers., Henriq., etc., more plausibly deny it. The reason is that the obligation of the sacramental seal arises only from the sacrament of confession itself, in order to receive absolution, as all teach with Vasq., Suar., Gabriel, Coninch., Castrop., with the same P. Conc., and with St. Thomas (4) who says: "The sacramental seal of confession does not extend to those things about which there is a sacramental confession." Therefore, the consultant, insofar as knowledge is given to him for the purpose of receiving advice from him (and not absolution), is indeed bound by the natural seal, but not by the sacramental seal. To the contrary argument, it is responded that the fear of revelation would already render the consultation odious, but not the confession. If there were ever a case in which consultation was necessary for confession, we do not deny that then revelation would render the confession odious; but we do not know of any case in which anyone, in order to confess, must absolutely consult others besides the confessor. Otherwise, in my opinion, contrary to Henriq., if the penitent consulted the confessor in order to later confess to him the very things that he reveals to him at that time; then that consultation would be a preliminary confession, since it is made in order to receive absolution from him (5). (1) In 4. dist. ar. q. 3. a. r. q. 3. and a. 2. ad 4. — (2) Lib. 6. n. 649. — (3) Ibid. ad potendum II. — (4) In 4. d. 31. a. r. q. 3. v. Sed contra. — (5) Lib. 8. n. 649.

[*Latin ed. p. 484*]

472 TRACTATE XVI. ON THE SACRAMENT OF PENANCE. 151. — It is inquired: 1. Whether the seal is violated by one who reads a document in which the penitent has written his confession? Some, such as Spor, Roncag., and others, affirm this; because that writing is closely related to a future confession; and because the revelation of such a writing would render the confession odious. However, most deny this, and it is more probable according to Sotus, Navar, Suar, Bonaventure, Wigand, Sayr, Laym, Conin, Lugo, Castrop, Holzm, Viva, Elbel, and Salmant, etc., because the seal is not violated in preparation for confession, but only in the actual confession or one that is about to begin, as we have said above. And since writing is not ordinarily necessary for confession, the second reason is answered in the opposite sense (in the same way as the answer is given in the preceding question), that the fear of the revelation of the writing would render the

writing odious, but not the confession itself. However, Lugo, Spor, and Holzm, among others, rightly object that if the writing was made by a mute person who could not otherwise confess, or if it was a letter written to a superior to obtain permission for reserved matters, or if the document, as Viva, Wigand, and Lugo rightly say, was entrusted to a priest for the purpose of confession, then it is also considered as a confession begun; or (they add) if the document was left behind in the confessional after the confession was made. Otherwise, as Laym, Castr., and Spor say, the one who reads such writings (and even more so the one who reveals them) cannot be excused from a grave sin, unless he knows for certain that it contains only very minor sins. Laym and Spor further add that the sins contained therein could not be revealed unless in a case of the utmost necessity, such as to save the republic or the life of an innocent person (1). 152. — Secondly, those things that fall under the seal are noted, and they are: I. All sins of the penitent that he has revealed with the intention of accusing himself (but not if they were narrated simply as a matter of fact), even venial sins, however small; for it is certain among all that there is no exception for the smallness of the matter in this seal; and this is true even if the penitent has left without absolution (2). II. Sins of an accomplice that the penitent has revealed, even without necessity (3): it has already been said in number 41 that it is never permissible for the confessor to ask the penitent about the name of the accomplice. Whether, with permission, he can admonish the accomplice, Tamb and Vasquez deny, saying that the sins of the accomplice also fall under the sacramental seal, so that the confessor cannot speak of them, even if permission is requested, either from the penitent or from the accomplice. But the true opinion, along with St. Antoninus, Gers, Adrian, Navar, Suar, Lugo, Roncag., and Croix, etc., affirms this; for the sacramental seal is instituted for nothing other than that the penitents may freely confess themselves, without fearing that their sins will be known. It is not valid to say that otherwise the confession would be rendered odious to others; for it is answered that only that odium of confession is to be avoided, which deters penitents from confession, but not that which incites the wicked to hope that their accomplices will not confess. Moreover, the confessor should not be importunate in requesting permissions, after repeated requests: for those permissions that are not entirely spontaneous and fully free, even if obtained, he cannot use (4). 153. — III. The object of the sin also falls under the seal, e.g., if a son is accused of hating his father, because the father quarreled: the quarrel of the father would be the object of the sin, which quarrel cannot be revealed by the confessor, as commonly held by Filliu, Viva, Renzi, Spor, and Tamb. However, these (1) Book 6, number 69. — (2) Number 637. — (3) Number

640, part II. — (4) Number 641.

[*Latin ed. p. 485*]

ON THE SEAL OF CONFESSION. 473. Two recent authors state that if someone, for example, confesses to having committed murder in a public square, the murder does not fall under the seal, because in such a case, it is not considered that the person intended to bind the matter in secret, since it is publicly known. However, it is generally accepted that all things do not fall under the seal if their manifestation does not directly or indirectly lead to the revelation of the sin, nor does it cause distress to the penitent (1). IV. The penance imposed, if it is severe, or rather, if it is not of minor consequence, which are usually imposed for very slight venial sins. V. All circumstances of sins, even when explained after absolution, insofar as they were discovered in relation to the confession; for example, if someone confessed to having been initiated into a secret society when they were illegitimate, or to having boasted of being learned when they were ignorant; in such cases, the fact of being illegitimate or ignorant falls under the seal. This also applies in cases where it is doubtful whether the circumstances were declared in relation to the confession, as commonly stated by Suarez, Bonaventure, Salm, Tamborini, Croix, and Mazzola (2). However, Concini and Tannini, and Diana, rightly note that there is no obligation of the seal regarding things that are only accidentally mentioned by the penitent, and which do not relate to the confession or the explanation of sins (3). VI. Revelations and virtues fall under the seal when they are disclosed to the confessor in order to demonstrate a fault committed, or one's own ingratitude towards God; otherwise, if they are disclosed only so that the confessor may know the state of the penitent's soul. Thus, Lugo, Croix, Roncaglia, Mazzola, and Vivacqua correctly distinguish. VII. Scruples and scrupulosities, which the penitent shows when recounting his sins, or when declaring his conscience, fall under the seal, as correctly stated by Concini, Lugo, and Granat, against Marchant, because they are at least indirectly related to the matter of confession. However, Lugo says that it would be different if the scrupulosities did not appear from the penitent's account, but appeared from the very manner of confessing; but I cannot agree with this, as Castrop, Hurtado, Concini, Sporer, Tamborini, and others reasonably state that many people are distressed and offended when they are considered and called scrupulous, especially if they are prelates and confessors, or judges, etc.; because being scrupulous is at least a natural defect, since it is a sign of a perplexed and confused mind, and such natural defects, when known through confession, are not permitted to be made public, as we will soon say. Therefore, I would not admit this, unless we are speaking of secular people, who, when they are called scrupulous, are rather praised, since they are considered to have a timorous conscience (4). 154. — VIII. Defects of the penitent also fall under the seal (as we have

already indicated), for example, if he is deaf, stammering, poor, ignorant, etc., whenever this is known through confession, as commonly stated by Suarez, Lugo, Busembach, Roncaglia, Mazzola, and others. And this is true even if the penitent explains such defects without necessity, but only for a better explanation of his sins, as rightly noted by Lugo, Salm, Croix, and others; otherwise, as the aforementioned authors commonly add, if the manifestation of these defects has nothing to do with the confession; for then it is not considered that the penitent intends to subject them to the seal; indeed, I say that even if he intended to subject them to the seal, he could not; since he is making them known irrelevantly (5). Lugo, Navar, Roncaglia, Mazzola, and others, along with Diana, state that defects that become known from the penitent's actions themselves do not fall under the seal.

(1) Lib. 6. n. 641. Dubit. 2.

(2) N. 657 ad II.

(3) N. 641. v. III. Pænitentiæ. ad IV.

(4) N. 644.

(5) N. 645.

[*Latin ed. p. 486*]

474 TRACT. XVI. ON THE SACRAMENT OF PENANCE. concerning those who are hesitant, or due to the manner of confession, for example, if the words are crude, stammering, or if the person is naturally impatient, irresolute, etc., because in such cases (as they say) it is not that they are revealing their sins, but rather committing them in confession. Some, such as Spor, Tamb., Conc., Antoine, and Renzi, object, saying that whenever the cause of a sin is perceived, its divulgence would render the confession odious; and I cannot agree with what these authors, Spor, Tamb., and Conc., say with Wigandt and Viva, that there is no need for a seal for such defects if they are reported by the penitent, so that they appear to be commonly known, because (as they say) it is not presumed that the penitent is narrating them unless they are known, as Holzm. correctly states, that their manifestation can somehow delay the penitent from confessing. Nevertheless, this is understood only for those defects whose manifestation the penitent may find difficult to bear, such as if he were of weak mind, naturally irascible, crude, or incapable (if he is of humble birth); but not when the defects are not those that cause shame or reproach, such as being blind, deaf, or a beggar, and the like, which, on the contrary, are commonly known. Nor do I believe it is generally permissible, contrary to what Lugo says, to reveal sins committed by the penitent while he is confessing, for example, insults directed at the confessor, and the like, because in this way, either absolution would be indirectly denied, or some vehement reprimand would be given. What Roncagl. says, that if the penitent is commonly known to be exces-

sively verbose and bothersome in confessing, the confessor does not break the seal if he were to leave, in order to free himself from that annoyance, can be admitted, but only when the penitent is simultaneously known to have a conscience that seeks honor; otherwise, I would say that if there is suspicion that his conscience is burdened by even grave sins.

155. Let us now speak of a case that is easily encountered, but which is not found discussed among the authors. The question is: what should the confessor do if someone, while confessing, speaks confusedly about serious matters, and when questioned by the confessor about the circumstances and his state, is found to be deaf, not responding or responding incorrectly; and, conversely, the confessor, due to the circumstances, cannot raise his voice? I say: if the confessor notices the penitent to be deaf at the beginning of the confession, then he should instruct him to return at a suitable time and place, when there are no others present who can hear him; and he can indicate his deafness by the circumstances, if it is commonly known. But if he notices this during the progress of the confession, then the confessor cannot, with a raised voice, instruct him to return, because this would arouse suspicion in others that he had confessed a serious matter; therefore, in such a case, I would say that the confessor, having, as far as possible, understood the matter, should give the penitent absolution, if he judges his disposition to be probable; conditional absolution, if he doubts his disposition; and in this case, he should add a light penance, since others will be hearing it. (1)

156. Thirdly, we note cases in which neither obligation nor the breaking of the seal arises. I. When the confession was feigned, or made with a wicked purpose, for example, to steal, seduce the confessor, or to deceive him. II. If someone were to say something, and protest that he said it under the seal of confession, in this case, there is never a sacramental seal, because such a seal cannot arise except from the sacrament itself. (2) III. If the confessor says that the confession was about a trivial matter. I say "trivial matter," because it is... (1) Kib. 6. n. 644. See here. – (2) N. 636.

[*Latin ed. p. 487*]

ON THE SEAL OF CONFESSION. 475. It is permissible to speak of several penitents, or to mention a particular fault, even a minor one, provided that this is not done in a way that reveals the identity of the penitent, since in this seal, there is no room for ambiguity: thus, Laym, Suar, Lugo, Salmanticensis, etc. (1). IV. If he praises the conscience of the penitent; but he must be careful not to give the impression to others who may have confessed at the same time that he knows something about their sins. V. If he says that he heard a certain confession, provided that the penitent has not been forbidden to reveal it, or that the person did not come to confess secretly, as Navar, Bus, Holzm, Sporer, etc., point out. VI. If he speaks generally of having heard a certain sin in confession, but in such a way that it is morally

impossible to identify the penitent; but in this case, great caution must be exercised, especially when speaking in public places, because listeners can easily come to know, or at least suspect, the identity of the penitent, due to circumstances related to the person or the place. VII. If he uses knowledge obtained outside of confession, provided that he does not reveal any circumstance known only from the confession. And even in this case, one must proceed with caution, because sometimes, even if there is no revelation, there may be a danger of scandal if it is feared that confessions will be revealed (2). VIII. If he reveals something with the permission of the penitent, this is certainly permissible, as taught by Navar, Laym, Lugo, Conc. Wigandt, Roncagl., and others, in common with St. Thomas (3), contrary to Soto, Durandus, and a few others, who say that penitents cannot give such permission; but we say, in common, that such a seal, since it is intended solely for the benefit of the penitent, can also be removed by the penitent himself. However, it must be noted that for the confessor to use such permission, it must be 1. express; 2. entirely spontaneous; therefore, he cannot use it if he has ever obtained it through threats or reverential fear, as would be the case if he had obtained it through repeated requests, after the penitent had initially refused to grant it. Therefore, it is always advisable to encourage the penitent to speak outside of confession about what he needs to reveal. 3. It must not be revoked, because the penitent can always revoke it, and I believe the same applies if the penitent were present in another case, because in that case, using such permission would seem to require him to also reveal the objectionable confession. It should be noted here, with Henriq. Graffis and Diana, that in cases of doubt as to whether the confessor has spoken or not about the permission, it is more prudent to believe the confessor than the penitent, or his heirs, for example, when the confessor, with the permission of the penitent, reveals that restitution is to be made. Furthermore, it must sometimes be granted by the penitent, by fact, that he may speak about matters revealed in confession, as common authors teach, Tann, Bon, Suar, Conc. Antoin, Roncagl, Buf, Salm, and others, with Lugo, who also points out that in such a case, the sacramental judgment already made remains in force, since that permission is considered morally connected with the confession made (4). It has already been said in n. 124 that it is never permissible to warn a penitent, without his permission, about an error committed in confession. However, it is permissible to warn within the confession about all faults committed, and sins confessed, even in previous confessions, as commonly taught by Lugo, Salm, Wigandt, Conc. Antoin, Ronc, Spor, etc. (whatever Diana and Fagund say), because it often belongs to the office of the confessor to remember past events, whenever he deems it necessary.

(1) Lib. 6. n. 64o.

(2) N. 638.

(3) In 4. Dist. 21. q. 3. a. 2.
(4) Lib. 6. n. 651.

[*Latin ed. p. 488*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE. It is considered beneficial to the penitent. Let no one say that the confessor retains the right to the seal even in a new confession; rather, it should be said that the confessor, in the act of confession, has the right to say whatever is beneficial to the penitent (1). And these same authors commonly state that it is permissible for the confessor to do this immediately after absolution (2).

157. Fourthly, certain cases are noted in which the seal is violated. The general rule is that the seal is violated whenever confession is used, directly or indirectly, to reveal a sin, or to the detriment of the penitent. But let us descend to particular cases. I. The seal is broken by one who would say that he heard a grave sin of some religious person in a certain monastery, or that grave sins are committed there, even if he does not mention the person, because then anyone in that monastery would suffer harm; thus, commonly, Suarez, Busembach, Diana Veteranorum, Concini, Castrop, Laym., etc., say whatever Escobedo and Henriquez say; the same is said by Diana with Maldero, if he were to say that he heard the sin of some religious person of such an order. But this is probably contradicted by P. Concini; for it is not considered that the revelation of this breaks the seal, nor does it cause harm to the penitent, since there are always bad religious persons in any order; unless it is a religion of strict observance (3). Diana also says that a confessor of a monastery of nuns would violate the seal if, in a sermon, he mentioned faults heard in confession. But this must also be understood with a grain of salt, namely, in the case in which he would mention a particular fault of some nun, or of that monastery; otherwise, if he spoke generally of faults that are commonly committed or can be committed in all monasteries; otherwise, he who hears confessions in monasteries could never preach there; which is not to be said, and commonly the opposite is the case, and it is clear from chapter Si sacerdos, offering num. seq. (4).

158. It is asked whether the seal is broken by one who would say in a certain town that such kinds of sins are committed, which he himself heard in confession? Navar, Ren, Fagund, etc., deny this; but commonly and rightly, Suarez, Bonacini, Tamburini, Laym, Lugo, Concini, Diana Veteranorum, Viva, Castrop, etc., affirm this, if the place is small; because then, if the revelation would lead to the infamy of the community, it would also lead to the detriment of the penitent. Otherwise, if the town is large, and the crimes are public, as these same authors Lugo, Concini, Viva, etc., say with Petrocor and Habert, who rightly allow this even to preachers, provided that they do not reveal the vices against which they are preaching, that they heard in confession; and provided that they do not descend to

particular circumstances, but speak in general, as said in chapter Si sacerdos, de offic. jud. ord., where it is said: "If a priest knows for certain that someone is guilty of a crime, whether he has confessed it or not..." he should not accuse him specifically, but indeterminately (5)." However, it remains doubtful what is considered a small town, and what is considered a large town. I would say, as others have also begun to advise: that it can be said, "Here, blasphemy reigns," for example, if the town consists of at least three thousand people; but fewer if it is only said, "Here, many grave sins are committed," without naming them specifically. But to name a sin that brings infamy (which, however, (1) Lib. 6. n. 653. — (a) N. 652. — (3) N. 654. v. Dubit. 2. — (4) N. 654. sub init. — (5) Ibid. v. Dubit. I.

[*Latin ed. p. 489*]

ON THE SEAL OF CONFESSION. 477 (even if it were a public matter), it is, in my judgment, required that the town be quite frequented by the people, e.g., with 6 or 7 thousand souls. If the preacher, however, has knowledge of sins confessed outside of confession, he can speak with greater freedom, but caution must also be exercised, lest he give the impression of revealing things to those who have confessed to him (1). 159. – He breaks the seal of confession who uses knowledge of confession for external governance to the detriment of the penitent. This is contrary to what Sambovius writes, following many ancient authors such as Adrian, Valentinius, with St. Bonaventure and St. Thomas (2). But Clement VIII, in a decree of May 26, 1594, forbade this, saying: "Both those who, for the time being, hold authority, and confessors who are later promoted to the rank of superiors, must be very careful not to use any knowledge they have acquired about the sins of others in confession for external governance." And although this decree was issued only for regular prelates, Croix and Holzmüller, whatever Habert may say, rightly hold that it should also extend to secular individuals, since the reason applies to them as well, namely, that otherwise confession would be rendered odious. Moreover, this is made clearer by another decree of the Holy See, published by order of Innocent XI in 1682, in which the following proposition was condemned: "It is permissible to use knowledge acquired from confession, provided that it is done without direct or indirect revelation and to the detriment of the penitent; unless (Pa) it is condemned) that a much greater harm follows from its non-use, in comparison with which the former is rightly despised." Then it states: "We also command all ministers of the sacrament of penance to abstain completely from bringing this (knowledge) into practice." Therefore, according to the aforementioned decree, it is not permissible to use knowledge of confession to the detriment of the penitent, even if a greater harm might result from its non-use. Hence, Croix, Viva, Holzmüller, and Mazzotti (contrary to what Sambovius also says with St. Antoninus) rightly state that it is never permissible to remove someone from office based on knowledge

of confession; or to deny them support in an election for an office, or a benefice; or to deny them the sacraments; or to take away the keys from a servant; or to deprive them of past acts of kindness; or to show them a stern face; or to hide the keys to the chest; or to close the doors (3). Thus, it is also not permissible (nor secretly) to deny communion to a penitent, or to warn him, after absolution has been denied to him, as we said in n. 124, and as Tournhem, Mazzotti, Croix, Holzmüller, etc., commonly state, contrary to Petrocchi, who cites St. Bonaventure, St. Thomas, St. Antoninus, and others, who formerly held that it was permissible to deny it; but today the opposite is certain from the decree of Innocent XI mentioned above. Castricone, Bonacich, Habert, Antoine, Spor, etc., argue that a confessor, based on knowledge of confession, can take greater care in protecting property and in correcting his own behavior; provided that no suspicion of sin is aroused, nor is there any reproach against the penitent; and St. Thomas (4) adheres to this, saying: "The confessor can say to the prelate that he should be more diligent, but in such a way that he does not reveal the penitent." But the Council of Trent rejects all of this, and not without reason, since in putting these things into practice, it is difficult for anyone to avoid all danger of revelation or harm. Furthermore, it should be noted that the rule is accepted by all, even by the Council of Trent, that it is permissible to use knowledge of confession whenever there is neither detriment nor revelation; hence, it is well that one can – (1) Lib. 6. n. 654. v. Dubit. I. — (3) Suppl. q. xi. a. 1. ad 3. — (3) Lib. 6. v. 656. — (4) Suppl. q. 15. a. 1. ad 1.

[*Latin ed. p. 490*]

478. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. The confessor should strive to correct the penitent's morals, pray for the penitent, treat him with human kindness, diligently inquire into his case, guide his questioning, instruct him, or warn others in general, and take precautions to avoid any harm (1). Furthermore, we say that if the danger of revelation or causing distress is removed, and the confessor knows that the church is defiled, he can, indeed he ought, abstain from celebrating the sacraments, as say Lug. Aver. Tamb. against Coninch. Sporer, Silvest., etc. (2). Note 2. If someone claims a benefice, and the superior, outside of confession, knows that the person is unworthy due to some defect of age, or knowledge, etc., he can, and indeed should, deny him the benefice, even if he learned of some of his crimes through confession, as say Merb. Nat. de Alex. and Petroc. with St. Thomas (3). It does not impede this if the penitent might suspect that the denial of the benefice was due to something learned in confession, because although there is an obligation to avoid reasonable suspicions, there are not unreasonable suspicions and conjectures that are easily suspected by the shrewd, as taught by Lugo, with Medin. Cast. Scot. and Croix, with Gob. Tamb. Gorm. and St. Thomas (4), who says: "If the removal of a subject could lead to the manifestation of a sin heard in con-

fession, or to some probable suspicion of him, the prelate should in no way remove the subject (5)." 160. Roncaglia, and rightly so, says that if a confessor learns from confession that someone is of bad conscience, he cannot, therefore (without another sufficient reason), excuse himself from hearing him if that person returns to confess, as long as his excuse causes others to suspect; otherwise, it should be said that if the confessor were alone, and left with some pretext, or excused himself from hearing him. But I cannot agree with the latter, because such flight or excuse would make confession odious, both to the penitent and to others in general; for if the faithful knew that confessors could fabricate pretexts to avoid them, this would give them reason to hate confession. Therefore, I say that in such a case, the confessor can only refuse to hear the penitent if he had previously decided, for another reason, not to hear confessions at all (6). 161. It is asked: 1. Can a confessor take precautions against some harm under some pretext, if he learned from confession that he is being plotted against in life and property? If the revelation of the seal and the penitent's distress are absent, there is no doubt that he can; but it remains doubtful whether he can, when those preparing the plots could argue from the confessor's actions that the confession was made by an accomplice about the plots being prepared? Castropal. Wig. Laym. Petroc., etc. permit this, because, as they say, the confessor does not reveal the confessed sin, but only the fact that a sin was confessed. But Lugo, Sanch. Ronc. Salm. Mazzot., etc. rightly deny this, because in such circumstances, there is always an indirect revelation, since, given these circumstances, not only is the confession revealed, but also, indirectly, the confessed sin, or at least a reasonable suspicion is given. 162. It is asked: 2. If a confessor is asked for the record of a confession, can he show it to the penitent who is not absolved? There are different opinions, but the more common and probable opinion, with Laym. Ronc. Croix, Spor. Elbel, Holzm., etc. (against Bonac. and Lugo), is as follows: If (1) Lib. 6. n. 657. v. Commonly. — (s) N. 686. — (3) In 4. d. str. q. 3. a. v. ad 4. and see lib. 6. n. 657. v. Si verb. — (4) Quodlib. 5. a. iz. — (3) Lib. 6. n. 66g. — (6) N. 669. v. Note at the end.

[*Latin ed. p. 491*]

ON SOLICITATION IN CONFESSION. 479. The text discusses the matter of a slip of paper, and whether it should be denied. It argues that if it were denied, it would reveal the penitent's unpreparedness; on the other hand, if it were granted, it would not testify to absolution given, but only to the fact that confession had been made, which is already a reality. However, if the confessor were to write on the slip that the penitent was absolved, this would be problematic, as lying is intrinsically evil, and it should never be said. Nevertheless, if the slips were already printed, and it was asserted that absolution had been given (which should never be permitted by prelates), then it seems probable, as others with whom I consulted believe, that it

could be lawfully presented even to those who are not absolved, at least when they openly request it, because in that case the confessor is not saying or writing anything false, but is simply performing the action of presenting the slip, which otherwise he cannot deny without revealing the penitent's unpreparedness (1). 163. — Question 3: Can the confessor avoid the penitent who threatens him with death, because absolution is denied to him? The answer, given by Lugo and Rone, is that he can certainly avoid him, whenever there is no suspicion that absolution is being denied; for those threats are not a confession, nor are they sins recounted in confession, but are sins committed within the confessional. However, if he cannot avoid him without creating such a suspicion, then he can recite a prayer for absolution. It does not object to saying that this appears to be a simulation of the administration of the sacrament, because a simulation would occur only if he said that prayer with the intention that it be believed that absolution was being given; otherwise, he is simply saying it to be freed from that vexation. He could also, as Father Cardenas says, present the formula in such a way as to be freed from the vexation, saying: "I do not absolve you," with the word "not" spoken softly (2). 164. — Question 4: Is it permissible to use a probable opinion in this matter regarding the seal? Gobat, Croix, Diana, etc., say that it is permissible only to adhere to opinions that favor the seal; but Father Viva says that it is not permissible to use knowledge acquired through confession, unless it is morally certain, or at least highly probable (so that the opposite is not probable), that it will not cause a breach of the seal, or any harm to the penitent. He asserts this for two reasons: first, because it is required by the due reverence for the sacrament; but this reason is not entirely convincing, since many serious authors, Pontius, Sanch., Salon, Vasquez, etc., say that greater reverence is not due to probable matters than to divine precepts or sacraments. Second, because of the danger of harm to the penitent, since even a probable harm makes confession odious. This reason is very strong, and has led me from my initial opinion: for on the one hand, it is not permissible to use a probable opinion to prejudice the certain right that another possesses, as already stated above in section 1, paragraph 21. On the other hand, it is certain that the penitent has the right not to be harmed by his confession; therefore, it is not permissible for the confessor to use any opinion that could bring about a probable harm to the penitent (3). CHAPTER IX. ON SOLICITATION IN CONFESSION. 165. Bull of Gregory XV. — 166. Point I. Clause I. In fact, etc. — 167. Clause II. Whether before, etc. — 168. Clause III. On the occasion of confession. — 169. Under the pretext of confession.

(1) Book 6, paragraph 659.

(2) Paragraph 679.

(3) Paragraph 653.

[*Latin ed. p. 492*]

TRACTATE XVI. ON THE SACRAMENT OF PENANCE. Section 170. Clause IV. Whether simulation is required, etc. — Section 171. Point II. Cases in which denunciation is required. — Section 172. Cases in which it is not required — Section 173. If a woman troubles the confessor. — Section 174. Whether a confessor who turns to touch, etc. — Section 175. If he has been reformed. — Section 176. Point III. Can the penitent be absolved before denouncing? Is a letter required, etc., and if so, can it be done by himself, does it conflict, etc. — Section 177. Concerning the excommunication incurred. — Section 178. If the admonition is not likely to be helpful. — Section 179. Denunciation must be made, even if it is not proven; also by others who know, etc., and even if the solicitation is hidden. — Section 180. Point IV. What if the solicitation is doubtful. — Section 181. He who praises beauty, etc. — Section 182. Particular cases. — Section 183. Concerning the unfitness of those who solicit to celebrate. 165. — From the bull of Gregory XV, confessors are bound to warn penitents of the obligation to denounce to the bishops those sacrilegious confessors who have solicited them for immoral purposes. First of all, it is helpful to note the words of the aforementioned bull, in the year 1622. "All priests, both secular and regular, who, whoever they may be, have solicited or attempted to solicit persons, in any way, during the act of sacramental confession, or before, or after, immediately, or by occasion, or pretext of confession, even if the confession is not followed, or outside the occasion of confession, in the confessional, or in any place where confessions are heard, or in a place chosen for hearing confessions, simulating that they are there to hear confessions." And then it is added: "We command all confessors to warn their penitents, if they know that they have been solicited by others, of the obligation to denounce the solicitors, or those who have treated them, etc., to the inquisitors and local ordinaries." POINT I. THE CLAUSES IN THE BULL OF GREGORY ARE EXPLAINED. 166. — CLAUSE I. In the act of sacramental confession. It is sufficient that the confession has begun, even if it is not completed. And here it should be noted that the confessor must be denounced if, during the confession, he gave the penitent a paper in which he incited her to El-Kef, as is stated in proposition 6, condemned by Alexander VII; the same applies if, during the confession, he told the penitent to wait at home; or if he asked her where she lived, and then approached her and solicited her, whenever it could be recognized from the circumstances that the question was asked with the intention of solicitation; thus, Bonac. and Bordon. (1) correctly state. 167. — Clause II. Whether before, or after, immediately. "Immediately before" is to be understood strictly, so that there is no interval between the solicitation and the confession, as commonly stated by Bos, Passer, and Delben, apud Ronc. However, if a woman, while sitting

before the confessional, is touched by the confessor, not by chance, but intentionally, on her hands or feet, he must certainly be denounced. If, however, the confessor solicited her on the occasion that the penitent asked him to confess, we say with Bordon. (contrary to the Salmanticenses), that he is not to be denounced because of this clause, but by clause III. "On the occasion of confession," whenever the confessor used that request to solicit her; otherwise, if he used it only to converse, and then attempted to solicit her (2). Similarly, "immediately after" is understood when there is no other intervening action, as commonly stated by Salm. Potesta. (1) Lib. 6. n. 676. → (2) N. 677.

[*Latin ed. p. 493*]

CLAUSES ARE EXPLAINED, etc. 481 Hurtad. Peyr., etc. Here, the authority states that if a penitent has already departed from the confessional, and this person subsequently seeks her out, then he is not to be denounced; but if, immediately after confession, he were to say to her: "Wait a little while," and then, after some interval (but not the following day), he approached her and sought her out, then he *is* to be denounced, even if, at the beginning, he had been discussing another matter, because in such a case, the discussion of that other matter is reasonably presumed to be a pretext. Nevertheless, some doctors deny this, and not without reason, if the matter about which the confessor speaks at the beginning is of great importance, and no pretext is apparent. Certainly, he is to be denounced if he were to say to the penitent: "Today, wait for me at your home," and then, without any occasion of great importance, he sought her out. The same applies if he were to immediately lead her from the confessional into some secret place. The same applies if, immediately after confession, as she approached to kiss his hand, he maliciously grasped her hand (1). 168.— Clause III. By occasion, or pretext, of confession. By "occasion" is understood when the confessor invites the penitent, or the penitent invites the confessor, to a true confession; by "pretext" is meant a false confession. And I. With regard to occasion, if the confessor, having been requested by the penitent to hear her confession, were to divert the conversation to another matter, and then seek her out, he is to be denounced according to this clause, even if she had not yet sat in the confessional, nor had the woman knelt, as the commentators Castrop, Salm, Ronc, and Potestas rightly state (2). The same applies, even if the woman were to ask to confess about an act of lust, as rightly stated by the Council and Mazzot, against Quarti and Leand. It is not to be objected that such solicitation is not close to confession, because it is already established that it is by pretext of confession (3). However, whether the confessor is to be denounced because, after hearing a sin from the penitent, he subsequently goes to her home to seek her out there is denied by Nav, Trullenc, Salm, etc., because, they say, the confessor is not then using the occasion of confession, but only the knowledge gained in

confession. But it is more probable that Ronc, Conc, Mazz, Potestas, Bordon, Lezan, rightly affirm, because truly, at that time, he is soliciting by occasion of confession, since the solicitation has its impetus from the confession; and it is reasonably presumed that the knowledge of the confession has been used as a pretext, because, having heard of the woman's weakness, he asks, for example, about her dwelling, whether she lives there alone, etc., or (as P. Conc. says) if the confessor had never before been familiar with such a penitent; and then, having learned of her aversion, he approaches to solicit her, or solicits her by letter, or, having been requested to hear her confession, he promises to hear her, provided that she consents to her wicked desire (4). 169.— II. With regard to pretext of confession, certainly the confessor is to be denounced who first inquires of the penitent whether she wishes to confess, and then seeks her out, as rightly stated by Conc, Roncaglia, Bordon, and Mazzot. Conversely, he is not to be denounced who asks permission from his superior to go to the woman's house under the pretext of confession, but the purpose is to attempt to seduce her, as rightly stated by Salm, Ronc, Bord, and Tancred, because in that case, the pretext of confession is not with respect to the penitent, but with respect to the superior. Whether the confessor is to be denounced who meets with the penitent in order to pretend to be sick, and invites her to himself under the pretext of confession, is affirmed by Fagund, Mazz, Conc, etc. But it is more common and more probable that Ronc, Escob, deny (1). Lib. 6. n. 577. — (2) N. 678. — (3) Ibid. Dubit. 1. — (4) Ibid. Dubit. 2.

[*Latin ed. p. 494*]

482 TRACT. XVI. ON THE SACRAMENT OF PENANCE. Bord. Diana, Leand. Trull., etc., because it is not the case that concern is aroused at that time under the pretext of confession, but rather, under such a pretext, an unworthy meeting is arranged; and therefore, the pretext does not serve to arouse concern, but to deceive those at home, so that they do not suspect anything. All the more should a woman be denounced if she were to arouse the concern of the confessor by pretending to confess, and if he were to consent to this. Conversely, it would be different if the confessor were to arouse the concern of a woman, even outside of confession, but if she resisted out of fear of being seen, the confessor might suggest that she pretend to be ill, and under that pretext, call him to her; because then it is clearly verified that the pretext of confession is the motive by which he proceeds to arouse concern, and to obtain the woman's consent. Thus, I also believe that the confessor called by a mother to hear the confession of her daughter should be denounced, and that he, under such a pretext, approaches the daughter to converse with her with impure intentions, and to arouse her concern. Similarly, I believe that he should be denounced who is called to absolve a woman who is deprived of her senses, and that he, under such a pretext or occasion, approaches her, and touches her inappropriately. The

same should be said regarding Escob. and Diana concerning the confessor who, in the confessional, or in another place chosen to hear confessions, pretends to hear a confession and thereby arouses the penitent (1). 170. — Clause IV. "Outside the occasion of confession, in the confessional, or in any place where confessions are heard, or in a place chosen for hearing confessions, if anyone attempts to arouse concern, or to provoke, or if they have illicit and improper conversations or dealings with them." Escob. and Ronc. note that the phrase "pretending to hear confessions there" refers to the case where both the woman pretends to confess, and the confessor pretends to hear the confession, inferring this from the word "pretending," which includes both. However, Castropal., Trullench., Fagund., and Diana say better that, in order to be denounced, it is sufficient that the confessor remains in the confessional, or in another place chosen for hearing confessions, and that he himself arouses the concern of the woman who is kneeling there; for then, by that very act, the confessor is already pretending to hear a confession, insofar as he makes it sufficiently clear to those present that the woman is confessing. Conversely, it would be different if he aroused her concern outside the confessional seat, while she is standing or sitting (2). It is said "outside the confessional"; but here arises another doubt, whether he who arouses concern, or speaks of shameful things in the confessional, should be denounced, without pretending to hear a confession? Castr., Escob., Ronc., Salm., etc., deny this, based on the words in the decree: "In the confessional, or in any place chosen, pretending to hear confessions there." Therefore, they say, it is necessary not only to be in the confessional, but also to pretend to hear a confession. But we say, with Potestas, Diana, Conc., and Mazzot., that if the confessor arouses concern outside the confessional, then, in order to be denounced, it is necessary to pretend to hear a confession; but if he arouses concern in the confessional, it is sufficient that he is alone and has an improper conversation. And this is proven by the decree of Paul V, July 10, 1614, in which he ordered that proceedings be taken against "confessors who have improper conversations with women in the confessional, outside the occasion of confession." Therefore, according to this decree, no pretense is required. It is objected that this decree has already been moderated by Gregory through his bull; but it is answered that no decree is considered revoked, unless a subsequent one is entirely opposed, so that it cannot be otherwise explained; but here, the bull can be properly explained (r' Lib. 6. n. 679. — a' N. 686.

[*Latin ed. p. 495*]

WHO ARE TO BE DENOUNCED. 483. Gregory states that simulation is not required with respect to the confessor, but rather with respect to another person chosen for confession, provided that the words simulating confession are uttered there, immediately after the chosen word. It is added

that, according to another decree of the Roman Inquisition cited in the work, all those "who have abused the sacrament of penance, confession," or those who use the confessional for dishonest purposes (1) are to be denounced.

SECTION II. WHO ARE TO BE DENOUNCED. 171. Today, according to the bull *Sacramentum*, by Benedict XIV, in 1741 (whatever some authors may have said before that), confessors who solicit are to be denounced in all cases, whether: 1. they are private individuals; 2. the solicitation is mutual; 3. the penitent consents (and it should be noted that, according to the decree cited in the work (2), the penitent who consents is not obliged to reveal their sin, nor should they be questioned about it); 4. whether the solicitation occurred long ago. (3). Furthermore, according to the bull of Gregory XIII, a layperson who simulates being a confessor and solicits is to be denounced (4). Moreover, a confessor who solicits is to be denounced, even if they have been accused, convicted, and punished for such an offense, as rightly stated by Bonac, Diana, Salmæ, etc., contrary to some (5). Furthermore, it is undoubtedly necessary to denounce those who solicit a penitent in order to lead them to sin with another; and this is so both according to the aforementioned decree, no. 170, at the end, and according to the bull of Gregory, which mandates that all those who, in confession, attempt to solicit persons for dishonest acts with each other, or (note) with others in any way... are to be denounced. The same applies if a confessor were to act in the confessional to encourage the penitent to sin with another, as is evident from the aforementioned bull *Sacramentum*, where it is mandated that denunciation is required, even if the solicitation was not for the confessor's own sake, but for another person (6).

172. Conversely, there is no obligation to denounce: 1. confessors who solicit for sins that are not dishonest, as commonly and correctly stated by Castr, Bon, Holzm, Ronc, Mazzot, etc., contrary to a few; because such an obligation is not expressly stated anywhere. Nor do the words of the bull, "illicit and dishonest words, or treatment," which are used to confirm the opponent's argument, apply, because it is responded that both "illicit and dishonest" refer to the same thing, as is evident from the context of the entire bull (7). 2. The deceased, for (with respect to) them, the purpose of both amendment and punishment completely ceases (8). 3. Penitents who solicit in confession, as commonly taught by doctors, contrary to Caramuel; I, for my part, am surprised by this, for he is so benign, indeed lax, and here so severe, but beyond reason, since the general rule for penal laws is that they do not extend to similar cases. Nor certainly does the same rule apply here to penitents as to confessors; for many reasons which are evident, and especially because of the suspicion that could arise regarding the revelation of the seal, if confessors were to denounce penitents (9).

173. However, it is asked: 1. Is a woman who solicited a confessor obliged

to denounce him, if he consented beforehand? Ronc, Felix, Potestas, Salm, Mazzot, etc., affirm that, according to the meaning of the bull, it should be imposed on penitents to denounce not only confessors who solicit them, (1) Lib. 6, no. 680, see above. — (2) Nos. 681 and 780. — (3) No. 687, Question IX. — (4) No. 682. — (5) No. 687. — (6) No. 693, Question XIII. — (7) No. 684. — (8) No. 692. — (9) No. 689.

[*Latin ed. p. 496*]

484 TRACT. XVI. ON THE SACRAMENT OF PENANCE. But also those who have engaged in improper conversations in the confessional. However, Bon., Castrop., Hurtad., del Ben., Trull. deny this; and Diana considers this opinion probable and safe; and Rone also adheres to it, saying with Bordon that by an improper conversation is understood that which the confessor is the author of; but the reason which seems to me more valid for maintaining this opinion is that in the bull of Gregory, only those penitents who have been solicited by others should be subject to the obligation of denunciation by the confessor. Those who solicit cannot be said to be solicited; therefore, it seems to follow from the words of the bull that a woman who solicits can, if she wishes, denounce the confessor, but she is not obliged to do so: firstly, because in that case she easily exposes herself to the danger that her own infamy may be revealed by the confessor who denounces her, and secondly, because it is not presumed that the pontiff intended to impose on a woman who has solicited the confessor, such a heavy burden that she herself must accuse, and therefore the pontiff expressed the words "those whom they know to have been solicited." Some have wanted to say that this opinion was later rejected by Benedict XIV in the bull Sacramentum; but this is false, since the pontiff said nothing other than that it must be denounced, even if the solicitation was mutual between the confessor and the penitent. But it is of great importance that the solicitation be mutual between the penitent and the confessor, to whom the confessor consents, since the doctors rightly distinguish between the first and second case, as can be seen in Potest. (1), where they say that mutual solicitation occurs when the confessor, solicited by the penitent for one kind of impurity, solicits her for another, as will be said in the following number; or when the confessor, initially dissenting, or diverting the conversation, later solicits her after some interval; and in these cases of mutual solicitation, several authors, Castrop., Peyrin., and Acuna, say that the obligation of denunciation does not apply: but this is the opinion that was condemned by Benedict. And rightly, for in such cases it is already verified that the penitent has truly been solicited; but in our case, when the confessor simply consents, it is not verified, nor can it be said that the woman has been solicited. When, however, the confessor's cooperation is to be considered, whether it is simple consent or even solicitation, this depends on the circumstances, the course of events, and the facts that occur between him and the penitent (2). 174. — Question 2. Must the confes-

sor who, being solicited for copulation, turns to touches, be denounced? Salm., Leand., and Diana affirm this, but Cast., Escob., Hurtad., Trull., etc., probably deny it. The reason is that the woman who solicits for copulation virtually provokes him to touches, which are contained in copulation, and which usually precede copulation; therefore, it truly happens that the confessor (as the reason stated above) does not solicit, but consents to the solicitation. However (as rightly say Castrop. and others), it should be said differently, if the one who is solicited for fornication turned to sodomy, or the contrary; because one of these impurities is not contained in the other (3). 175. — Question 3. Must the confessor who is soliciting and has already been reformed be denounced? Sotus, Mol., Lugo, Castrop., Sor., Escob., Fagun., Trullen., Hurt., etc., deny this, and this opinion is called probable by P. Viva, and by the Instructor, etc. The reason is (as they say), because then the principal purpose of denunciation ceases, which is the amendment of the matter. They say that the signs of amendment are: 1. if for a long time he has not attempted the woman again, even though she has returned to him several times. 2. If for three years (1) Tem. 2. de Denunc. n. 581. — (2) Lib. 6. n. 681. — (3) N. 632.

[*Latin ed. p. 497*]

WHO IS OBLIGATED TO REPORT. 485. It is well to live. 3. If he has become a religious. 4. If he is considered a man of right conscience, and has relapsed into this fault only once or twice, or if he is an old man, or if he repents immediately after the solicitation. Father Viva observes that these signs are not sufficient, because they must morally constitute a certain judgment of amendment. But, nevertheless, I, along with Suarez, Salm., etc., judge the opposite opinion to be absolutely more probable, namely, that even those who have amended their ways must be reported, because the Church, in such a fault, not only requires the amendment of the deed, but also a reprimand, for the example of others (1).

POINT III. WHO IS OBLIGATED TO REPORT. 176. — Before we proceed to this point, three things must be noted: first, that penitents who have been solicited cannot be absolved before a report is made; and if, perhaps, they are hindered by a just impediment, they must at least promise to do so as soon as possible. Note the words of the bulla *Sacramentum* of Benedict XIV, where this is more clearly expressed: "Let confessors be careful not to grant sacramental absolution to penitents whom they know have already been solicited by another, unless they first bring about the report, indicating the delinquent to the competent judge, or at least promise that they will do so as soon as they can" (2). But is the penitent who cannot personally report obligated to do so in writing or through others? Salm. affirms this, and I also adhere to this opinion, along with Viva and Ronc., whatever others may say, whenever there is no moral danger of infamy: because the penitent is bound by this obligation; he must satisfy it by whatever means he can;

therefore, if he cannot do so personally, he is obligated to do so in writing. It does not object that it is said in tract. 20, n. 44, that if a penitent with a reserved case is hindered from appearing before the superior, he is not obligated to do so in writing: because there the obligation is to personally go before the superior, so that he may receive a warning from him: but, according to the words of the pontiff, this obligation is only to indicate to the prelate the delinquent, so that he may provide suitable remedies to mitigate the damage that he can cause (3). This report, if the bishop does not want to receive it, can be sent to Rome. However, if the confessor himself wishes to receive the report by authority of the bishop, and he cannot write it, it will be sufficient if he informs the prelate, in the name of the confessor, of the nature of the solicitation, without mentioning the consent or dissent given by the penitent. It is said that he wishes to receive it. Furthermore, Viva, Tamb. and Ronc. note that it does not expedite in all cases that the confessor should undertake the burden of making such reports, unless he has observed in some rare case that there is no other remedy available to prevent the common damage (4). Moreover, Bene and Instr. etc., say that if a woman strongly opposed going to the bishop, she can wait for another confessor who is willing to report the matter to the bishop, if the present confessor refuses to do so. And in the case where the penitent cannot be induced to report, even through the confessor, Father Mazzot. reports a decree in which it is said that in such a case, recourse must be had to the Apostolic See for a suitable remedy, and (1) Lib. 6, n. 686. — (2) N. 695. — (3) N. 699. — (4) Ibid. See Note.

[*Latin ed. p. 498*]

486. TRACTATE XVI. ON THE SACRAMENT OF PENANCE. In the meantime, the penitent is not absolved; and the same author testifies that, in certain cases, such as great distress or some vain fear, the Apostolic See has, for that particular instance, released him from the obligation to denounce (1). 177. Secondly, it must be noted that a penitent who, when able, does not denounce within one month (which is counted from the day the obligation is known), incurs excommunication by that very act (2). However, it is debated whether, after having made the denunciation, he can be absolved from excommunication by any confessor? Salm, Diana, Mazzoti, etc., deny this. But the most learned Christianus Lupus affirms it, to which Rone adheres, saying that the reservation of this censure lasts only as long as the contumacy lasts; and this is rightly confirmed by the words of the decree cited in the work (3), where it is said that the penitent cannot be absolved from excommunication unless he has first fulfilled his obligation; therefore, it follows that when he has fulfilled his duty, he can be absolved. On the other hand, it must be noted that if anyone unjustly accuses, or cooperates in accusing, an innocent priest of solicitation, he incurs a papal reservation, but without censure, as is

stated in no. 129 of the bulla *Sacramentum* of Benedict XIV, where it is said: "Whoever has stained himself with such a crime, either by falsely accusing innocent confessors, or by wickedly seeking to have it done by others, through impious persuasions, or promises, or flatteries, or threats, or by any other means whatsoever..." However, Salmantius (4) points out that this is to be understood of an effective persuasion, so that it is the cause of the unjust condemnation that follows. They also add (5) that it is to be understood unless the persuasion is effectively revoked before the denunciation is made. 178. Thirdly, it must be noted that although the warning of denunciation, which must be given, may not be effective, it must nevertheless be given, as rightly observed by Father Rone (6), both because this concerns a common good, according to what is said in no. 116, and because in the bulla of Gregory, the obligation is not imposed on the penitents, but on the confessors, to warn those who are solicited, etc. (7). 179. From this, it must be noted first that the denunciation must be made by the penitent, even if he cannot prove the solicitation, as rightly stated by Castr, Bord, and Bannez, and the opposite opinion, which is held by a few, seems to be clearly rejected by proposition 5, condemned by Alexander VII (8). 2. It is rightly asserted by Suar, Castr, Salm, and others in common, that the denunciation must not only be made by those who are solicited, but also by anyone who knows about it, provided that he knows it from trustworthy persons, as is expressed in the decree (9), where it is said that all those of whom knowledge is had, who have abused themselves in the sacrament of penance, are to be denounced. And this applies even if the solicitation was known under a natural secret, as rightly stated by Escob, Castr, Trull, Salm, etc., because there is no obligation to keep a secret given under oath; otherwise, there would be a common good at stake, except in the case where the secret has been revealed in order to give advice. 3. Without a doubt, the denunciation must be made, even if the solicitation is hidden; so say Salm, Rone, Fill, Trull, Bannez, etc.; nor does it matter to say that penal laws are to be strictly interpreted, because such a rule does not apply in this case (as in our case) where, if the strict obligation were held, the law would be rendered useless. (1) Lib. 6, no. 699, see *Dieunt autem*. (2) No. 695. (3) Ibid., see *An autem*. (4) Salm, *Append. tr. de Bulla Crue*, c. 6, no. 351 and 232. (5) Ibid., cited no. 252, in the end. (6) Lib. 6, no. 694. (7) No. 695. (8) Ibid., in the end. (9) Ibid., in the end.

[*Latin ed. p. 499*]

OF DOUBTFUL SOLICITATIONS. 487. POINT IV. REGARDING DOUBTFUL SOLICITATIONS. 180.—It is inquired whether, when a solicitation is doubtful, a report should be made. It is necessary to distinguish: if a certain solicitation has been spoken or done, and only the person making the solicitation is doubted, then a report should certainly be made, so that at least the superior may inquire about the

person. However, the superior should refrain from inquiring if it is not easily possible for him to be certain about the person, in order to avoid the danger of falsely accusing an innocent person. But if the person is certain, and only it is doubted whether the words or actions constitute a true solicitation, then, according to Rone, the Council of Trent, Bonac, Salm., etc., and the *Instructio* for confessors, there is no obligation to report; so also *Reg.* 49, *Jur.* 6. In matters of penalties, the more lenient interpretation should be followed; first, because in doubt, no one should be deprived of his good name; and second, because, indeed, doubtful offenses are not to be considered offenses (1). However, an exception is made, first, unless there were very strong indications (e.g., of a depraved life, or a bad reputation of the confessor), which would form a moral certainty, as Rone, Council of Bossuet, *Instructor*, etc., say. A second exception, according to Bon., Aeun., etc., is if the words themselves seemed to suggest solicitation, even if the intention is doubted, since the intention must be understood according to the proper meaning of the words. Otherwise, if there was a presumption of fraud; for example, if the woman or her relatives had had a dispute with the confessor, or if she was somewhat mentally deficient (2). In the case where there were indications of some importance, although not sufficient to require a report, it would be advisable for the superior to become more certain, so that he could act accordingly in the future. 181.—It is inquired whether the confessor should be reported who, while confessing, praises the penitent's beauty? Some affirm, others deny; but it is better to follow Escob., who says that the circumstances, and especially the discourse that took place during the confession, should be considered. Some say that the confessor should be reported who, while speaking with a female servant in the confessional, praises the lady, so that she may report it; and the same is said if he gave a large and unusual gift to the penitent. But we say that the circumstances should also be considered, e.g., if the penitent is poor, if she is married, if she had previously given a gift to the confessor, etc. (3). 182.—Here we will mention some particular cases in which the doctors believe that the confessor should be reported. First, if the confessor said to the penitent: "I would take you as my wife, if I were a layman," as Salm. and Potest. say, against Bordon., because these words are truly too suggestive of lust. Second, if he said: "Wait for me today at your house, because I will speak with you," and then, without speaking of any other matter, he spoke to her in a way that solicited her. Third, if he said to her: "Your sins have made me fall into pollution." Rone, Bord., and Potest. Fourth, if, to a woman asking to confess, he said: "I do not want to hear you in confession, lest something happen to me, because I am captivated by your love." Fifth, if he said: "If someone gave you money, would you sin?" and he did not rebuke her for it, or if he rebuked her, and then, after she had been offered money, he solicited her. Sixth, if he said: "Promise me that when you come to my house, you will do what I want,"

when the woman confessed that she had committed shameful acts with another, and he said: "Why not with me?" or to a woman confessing a shameful desire for him. (1) *Lib.* 6, n. 702. — (2) Ibid. — (3) n. 703.

[*Latin ed. p. 500*]

488 TRACTATE XVII. ON EXTREME UNCTION AND HOLY ORDERS. he should reply: "Let us speak of this after the confession." If he were to rebuke his concubine for having committed sin with another, adding threats and insults, or if he were to rebuke her for sins committed with others, and not for those committed with him (1). Thus, he would also be wrong to say to the penitent: "Tell me," how much you love me?" or: "Do you feel in yourself those temptations towards me, which I experience towards you?" or: "I would like to always see you and be near you;" or: "Because of you, I have suffered a wicked dream;" or: "You have tormented me because you do not love me." 183. — It should be noted here, finally, that Benedict XIV, in the bull *In generali song. in confessarios sollicitantes* (or those who abuse the sacrament for divination), in addition to the penalties previously mentioned, added perpetual incapacity to celebrate the sacraments, saying that those who abuse the sacrament "in the act of sacramental confession, or on the occasion and pretext thereof, besides the penalties legally imposed, also incur a perpetual incapacity to celebrate the sacrifice." Here, it is doubted first, whether this incapacity is incurred before a declaratory sentence is issued? On the one and the same hand, it seems that it should be denied, since in a similar case, namely that of simoniacs, who incur the incapacity to receive benefices, a sentence is already required, as taught by Molin, Navarrus, Layman, Castrén, Salmeron, etc. But, notwithstanding this, it must be affirmed, because, according to the common opinion of Layman, Castrén, Anacleto, Salmeron, Vivès, Mazzola, etc., a sentence is required for those penalties which are said to be positive, and which require an action, but not for those which are privative, that is, those which involve incapacity to acquire a right, or to use a right already acquired: and thus, the doctors speak, in general, of the incapacity that a beneficiary has who fails to perform all his duties in order to receive the fruits of the benefice. As for the first case of simoniacs, it should be said that the doctors had particular reasons for that case, which do not apply to our case. It is doubted. 2. Whether this kind of incapacity is excused by invincible ignorance? In this case, it seems that the same should be said as was said about irregularity resulting from a fault (2); therefore, see what is said in tractate 19, speaking of Censures, n. 84. Whether, in this case, the bishop can grant a dispensation, see what is said below in tractate 20, on Privileges, n. 53 (3). TRACTATE XVII. ON THE SACRAMENTS OF EXTREME UNCTION AND HOLY ORDERS. CHAPTER I. ON EXTREME UNCTION. 1. On the essence and effects of Extreme Unction. — 2. I. On the remote matter. — 3. On the proximate matter. — 4. Whether the unction of all the senses is

necessary. — 5. II. On the form, and how it should be adapted. — 6. III. On the minister. — 7. IV. On the subject to whom Extreme Unction should be administered. — 8. When it may be repeated. — 9. On disposition. — 10. Whether it should be administered to children. — 11. Whether it should be administered to the dying, the intoxicated, the impenitent, the deaf, etc. — 12. Whether there is a grave obligation to receive this sacrament. — 13. On the administration. J. — EXTREME UNCTION is defined: "A sacrament instituted by our Lord Jesus Christ, and promulgated by the Blessed James," for the salvation of the soul, or even (1) Book 6, n. 704. — (2) n. 353. — (3) n. 705.

[*Latin ed. p. 501*]

OF THE EXTREME UNCTION. 489. It is conferred upon the infirm who are in danger of death, through the unction with blessed oil and the priest's prayer. It is called a sacrament, because Extreme Unction is a true sacrament, as declared by the Council of Trent (Trid. sess. 14, can. 1, de Extrem. unct.). It is called "promulgated by Blessed James," as is evident from the epistle of this Apostle, chapter 5, verses 14 and following: "Is any man sick among you? Let him bring in the priests of the church and let them pray over him, anointing him with oil in the name of the Lord. And the prayer of faith shall save the sick man. And the Lord shall raise him up. And if he be in sins, they shall be forgiven him." It is said to be "for the salvation of the soul, or even of the body," to indicate its effects. The primary effect is to comfort the soul in the agony of death, so that it may resist the temptations of the devil; the secondary effects are three: 1. to remove the remains of sin; 2. to extinguish the debt of punishments that still remain to be satisfied; 3. and also to confer the health of the body, if it is conducive to the salvation of the soul, as the Council of Trent declares (Trid. sess. 14, chap. 2). As for the remission of sins, the common and more probable opinion affirms that the principal effect of this sacrament is not the remission of sins (as the Scotists contend), but the removal of the remains of sin; thus, Gonet, Sotus, Suarez, and others. St. Thomas (1) says that if the sick person is unaware of his sins, but at least feels sorrow for them, then, through the power of this sacrament, all sins, both venial and mortal, are forgiven him. This is also the opinion of Bellarmine, Suarez, Layman, and others, who deduce it from the passage cited from the Council of Trent: "Whose unction doth remit sins, if there be any, and doth cleanse the remains of sin." Moreover, it is very probable, as Merbes, Habert, Tournely, Suarez, and Salm argue against Gonet, Petrocor, and others, that this sacrament remits mortal sins, not by accident, but by itself, although consequentially; because, although this sacrament is for the living, it was instituted by God to remit sins by itself, according to the words of the Apostle: "And if he be in sins, they shall be forgiven him," and also as is deduced from canon 2 of the Council of Trent, in the same session 14. Consequently, it is said that Extreme

Unction is primarily instituted to remove the remains of sin, namely, the internal weakness, obscurity, etc. But because sin is found in the soul, its remains cannot be removed without the sin being forgiven; therefore, consequentially, this sacrament, by removing the remains, also removes the sin (2). The common opinion of the saints, as held by St. Thomas and St. Bonaventure, is that this sacrament can be valid and efficacious, so that, if the obstacle of sin is removed, at least through contrition, if the sick person receives it in good faith while still in sin, he may receive the first grace (3). Therefore, Layman and Tamburini say, and Pope Benedict XIV agrees (4), that if the sick person is not capable of receiving another sacrament, the priest can interrupt the Mass to administer Extreme Unction to him, so that he may receive grace if he is in sin and has contrition (5). It is said to be "for the infirm who are in danger of death," to indicate the subject to whom this sacrament is to be administered. It is said "through the unction of blessed oil," to indicate the matter. It is also said "and finally, and through the priest's prayer," to indicate the form. But it is necessary to discuss each of these points separately, namely, I. regarding the matter; II. regarding the form; III. regarding the minister; IV. regarding the subject to whom it is to be administered; V. regarding the administration.

(1) Suppl. q. 30, n. 1.

(2) Lib. 6, n. 751.

(3) N. 707, v. Quer. II.

(4) De Synod., lib. 8, c. 6, n. 5.

(5) Lib. 6, n. 238.

[*Latin ed. p. 502*]

490 TRACTATE XVII. ON EXTREME UNCTION AND ORDER. 2.—I. Concerning the Matter. The matter is consecrated oil for the sick; and each year, the old oil must be replaced with new oil, according to the prescription of Clement VIII, which imposes this obligation under a penalty, as the authors Bona, Castrop, Croix, etc., maintain against others. However, if new oil cannot be obtained, it is permissible to use the old oil, as Laym, Avers, Salm., etc., state, with a certain declaration from the Sacred Congregation. And if the oil is lacking due to the passage of time, it is permissible (out of urgent necessity) to mix consecrated oil with unblessed oil, but in a smaller quantity, as the Rituale states, and this mixture can be repeated, as Bona, Ronc, Carden, Possev, and Croix state; and as the Sacred Congregation has declared, provided that the oil mixed with the old oil is of a smaller quantity (1). Note 1: This oil must be made from olives, and it is undoubtedly consecrated out of necessity. There is doubt whether it is also necessary for the sacrament itself? Juvenin, Cajet, Sanch., etc., deny this; but the common opinion affirms it, along with St. Thomas (2), Scotus, Petroc, Conc, Salm., etc., as is stated in the Council of Trent, Ses-

sion 14, Canon 1: "For the Church has understood the matter [of extreme unction] to be oil blessed by a bishop"; in which statement, certainly, there is a dogmatic declaration (3). Note 2: It is probable, as Bellarmine, Valen, Barbos, Castrop, etc., maintain (against Suar, Laym, etc.), that the oil must be blessed out of necessity for the sacrament itself, in relation to extreme unction. Regarding this matter, the opposing opinion holds that this sacrament can be conferred with the oil of confirmation or of the catechumens; in practice, this is not probable, except in the sole case of necessity; and then it must be administered under the condition that, if consecrated oil for the sick can later be obtained, it must be repeated, as prescribed by St. Charles Borromeo (4). Note 3: The blessing of this oil can be conferred by the Pope upon a simple priest, according to the decree of Clement VIII (5). Note 4: For the validity of the sacrament, it is sufficient to dip the tip of a finger in the oil and apply it. But it is doubtful whether a single drop is sufficient? Filliuc, Suar, Peyrin, Trull, etc., deny this, stating that the oil must be spread. But it is more commonly and probably affirmed by Tannerus, Escob, Hurtad, Dicast, Croix, etc., provided that the single drop is sufficient to anoint all the parts of the body; nevertheless, since the former opinion is not improbable, and considering external appearances, it should be followed in practice (6). 3.—The proximate matter is the anointing made by the priest on five senses, or at least on the parts closest to them, if the sick person were to be lacking in some sense. Note 1: Immediate touch of the hand is not necessary, since in cases of necessity (such as during a plague), a long rod dipped in oil can be used, which must then be burned; as stated by Silv, Wigandt, Escob, Busemb (7). Note that although there are many anointings, they all constitute one sacrament. Whether each anointing confers a partial grace is denied by St. Thomas (8), who states that the entire grace is conferred in the final anointing. But many others, along with Scotus, affirm that each anointing has its own form, signifying a grace. Both opinions are probable (9). 4.—But it is questioned whether the anointing on five senses is necessary for the sacrament? Some probably deny it, as Silv, Becan, Merb, Natal, d. Alex., etc., state, saying that one anointing on any part of the body is sufficient, since the Apostle says nothing more than that they should anoint with oil. But it is more commonly affirmed by Sot, Suar, Castrop, Laym, and Salm., along with Bellarmine and St. Be (1) Lib. 6, n. 708. — (2) Suppl., q. 29, a. 5. — (3) Lib. 6, n. 709, Dubit. I. — (4) Ibid., Dubit. II. — (5) N. 709, Dubit. 5. — (6) Ibid., Dubit. 4. — (7) N. 710. — (8) Suppl., q. 29, a. 8. — (9) Lib. 6, n. 707.

[*Latin ed. p. 503*]

OF THE EXTREME UNCTION. 491, and St. Thomas. For this is the use of the Church, commonly understood by doctors, and thus practiced. Only in times of necessity (as these authors say, as well as the Rituale) can this sacrament be conferred, but under the condition of a single unction on

some member; but it would be better to do so on the head, under this contracted form: "May God forgive you whatever you have done amiss through your senses," as some wish; or, as others prefer: "May God forgive you whatever you have done amiss through your senses, namely, sight, hearing, taste, smell, and touch"; provided that the word "amiss" is added, so that if the sick person should fail before the words of absolution, the sacrament may be valid. But if the sick person survives, the unctions must be repeated on each sense, with the prayers omitted, as prescribed by the Rituale; where it is also said that, if there is doubt whether the sick person is alive, the condition "if you are alive" should be added (1). It is certain, however, that it is not necessary to anoint both parts of each sense, namely, both eyes, etc.; therefore, in a case of necessity, if time does not permit, or if there is a danger of infection, or if the sick person cannot be turned to the other side, it is sufficient to anoint one eye, one ear, etc. The anointing of the loins, the Rituale says, "is always omitted in women, and also in men, when the sick person cannot be conveniently moved." The anointing of the feet, according to the common opinion of Laym, Suarez, Castrop, Ronc., and Salm., from St. Thomas (2), is not necessary for the sacrament, nor is the order among the unctions of the parts (juxta communem); although, as they say, the reversal of this order would be gravely illicit (3).

5.—II. As for the form, these are the words: "Through this holy unction, and through His most pious mercy, may the Lord forgive you whatever you have done amiss through sight (or through hearing, etc.). Amen." The word "amiss" is of the essence, as rightly say Croix, Gobat, and Mazz. (contra Boscu); for the remission of sins is the principal effect of this sacrament. The word "holy" is certainly not of the essence, but to omit it is to sin. As for the words "through His most pious mercy," many contend that they are of the essence; but it is more commonly and probably denied by Laym, Castrop, Bonae, Ronc., Salm. However, all agree that their omission is a grave sin (4). Whether a non-imperative form, such as ours, is valid, or whether an indicative form, such as "I anoint you, so that you may overcome the powers," as was the Ambrosian form, is valid, is affirmed by Juven., Tourn., and others: but the common opinion, with Suarez, Merbes., Petrocor., and others, with St. Bonaventure and St. Thomas (5), denies it, and St. James already prescribed: "And pray over him who is being anointed... and the prayer of faith will heal the sick." To the Ambrosian form, Benedict XIV responded that the words "so that you may" make it imperative, and give it this meaning: "I anoint you, praying that you may..." (6).

Note: 2. The form must be adapted in the following manner, as prescribed by the Rituale: the priest, having dipped his thumb in the holy oil, must anoint in the form of a cross on the part being anointed, adapting the cross and the words to the unction of whatever part, always beginning from the right side: "Through this holy unction †, and through His most pious

mercy, may the Lord forgive you whatever you have done amiss through sight (while the eyes are being anointed)." It is to be noted that the form must be ended before the other part is anointed. The part anointed must be wiped off by the priest himself, or by a minister (if there is one) (1) Lib. 6. n. 710. v. Quer. — (2) Suppl. q. 52. a. 6. — (3) Lib. 6. n. 719. v. Certum. et Nec etiam. — (4) N. 711. — (5) Suppl. q. 29. a. 8. — (6) Lib. 6. n. 712. Dubit. r.

[*Latin ed. p. 504*]

492 TRAC. XVII. OF THE EXTREME UNCTION AND ORDER. In the sacred rite, a linen cloth is used, which is afterward to be burned, and the ashes cast into the sacrarium. Then, in the same manner, the ears are anointed through hearing; the nostrils through a fragrant substance; the mouth (with the lips closed) through taste and speech; the hands (for priests outside, for others inside, on the palms); the feet (on the soles) through walking; the kidneys, through the delight of the loins (1). Note 3. According to the Greek rite, there should be seven priests, each anointing a different part, but according to the Latin rite, there is only one minister. However, in cases of necessity, one priest can anoint one part, and another another, each pronouncing the form corresponding to that part, as commonly stated by Suar., Concil. of Trent, Castrop., Bonac., Salm., Spor., etc., but one cannot anoint, and another pronounce the form; nor can one anoint one eye, and another the other; as declared by Benedict XIV in the bull Etsi pastoralis, in the year 1742, § 5, no. 4. If, however, a priest could not complete all the anointings, the remaining ones must be supplied by another, unless it is the case that the later anointings are supplied after a noticeable time, e.g., after a quarter of an hour, because then all must be repeated, as stated by Merati, Avers. Croix, etc. (2). 6. — III. Regarding the minister, note 1. The proper minister of the Extreme Unction is the pastor or another priest with his consent; if this is lacking, the sacrament is valid, but illicit, and the priest would sin gravely. Whether the presumed consent of the pastor is sufficient, some deny, but it is probably affirmed by Sanch., Castrop., Vaient., Bonac., Salm., etc. Regulars, however, administering this sacrament without the permission of the pastor, incur papal excommunication in Clement I, de Privil., § 1. It should be noted that St. Pius V, in his bull Immarcessibilem, in the year 1567, granted to the Theatine Fathers (and to others by communication) the ability to administer this sacrament to their servants, mercenaries, and any guests who may be staying in the houses of that congregation; also, Sixtus IV had previously granted to the regulars the ability to give the Eucharist and the Extreme Unction to the laity, if the pastor unjustly or maliciously refused. However, the common opinion is that in necessity, if the pastor is absent, or does not want to administer the Extreme Unction, and the bishop cannot be reached, then any priest, even a regular, can administer this sacrament (provided he is

not excommunicated or suspended); in such a case, the permission of the pontiff is presumed; thus, contrary to a few, as taught by Suar., Laym., Bonac., Concil. of Tours, Nat. of Alexandria, Salm., Benedict XIV, etc., and the same was granted by St. Charles Borromeo for his diocese (3). Whether a suspended pastor can administer this sacrament? Some affirm, but it is more probable that they deny it, according to Bonac., Suarez, etc. (4). Note 2. With Soto, Possev., Bonac., etc., it does not incur irregularity (as some excessively scrupulous priests hold, if, by ordering that a sick person be anointed, he should expire; whereas, as they rightly say, Suar., Cornel., Salm., etc., such irregularity should be due to fault, from which one is free who exercises the office of charity. Note 3. The pastor is bound under a grave obligation to administer the Extreme Unction to those who request it, unless excused by a just cause, such as the danger of death (see the statements in tract 7, no. 27 and 28, on the Fourth Precept); but in any case, he is bound if the sick person is probably in mortal sin, and has not confessed for a long time, as commonly stated by Suarez, Castrop. (1) Lib. 6, no. 711. — (2) No. 724. — (3) Act. Mediol. p. 4. — (4) Lib. 6, no. 722 and 725.

[*Latin ed. p. 505*]

OF THE EXTREME UNCTION. 493 Sp. Conc. Salm., etc. (1). It should be noted that it is probable, as Gobat, Arriag., and Croix state, that a parish priest may lawfully retain the holy oil within his own home, provided it is carefully guarded, in order that it may be brought forth at night if needed, and that otherwise it would not arrive in time (2). 7.—IV. Regarding the person to whom the Extreme Unction is to be administered, it should be noted that, as Rit. observes and as Benedict XIV teaches in the letter beginning *Ex quo*, concerning the ecclesiastical rites of the Greeks, in the new edition of the Euchologion (which is the same as the Rituale, or manual), this sacrament is not to be administered to those who are in good health, but only to those who are suffering from a serious illness (3); therefore, it should not be given to those who are condemned to death, or who are in conflict or on a dangerous voyage, or who are in any other imminent danger of death. It should only be given to those who are seriously ill and are near death, or to the elderly who are "failing," as the Rituale says, "and appear to be dying on the morrow, even without any other infirmity." The Greek rite, which Juvenin objects to, does not constitute an obstacle, according to which all those present are anointed with the oil of the sick on the major feast day of Holy Week: but Benedict XIV replies that such an anointing is not given as a sacrament, since they are anointed without any form (as he explains at length in the aforementioned letter for the edition of the Euchologion, § 46), but rather as a true sacred ceremony (4). And likewise, it should be said with the common opinion of Suarez, Castrop., Bonac., etc. (contra Wig.), that if this sacrament is given to a sick person

who is not suffering from a serious illness, it would not only be unlawful, but also invalid (5). However, if it were given to someone suffering from a serious illness, but without any apparent imminent danger of death, it would be valid, but unlawful. Nor does it contradict what Benedict XIV, in § 46, teaches, namely, that it should be given to those who are seriously ill; for this should be understood in accordance with the prescribed meaning of our Rituale, namely, that the illness must be so serious that there is a probable danger of death, so that the danger of death (as the Rituale prescribes) appears to be imminent. But the question arises: in what stage of illness should the Extreme Unction be given or can it be given? When there is an imminent danger of death, there is no doubt that it can, and should, be given, according to the Rituale: "This sacrament should be administered to the sick who... are suffering so seriously that the danger of death appears to be imminent." And according to the common opinion of the doctors, with the Roman Catechism (de Extr. Unct. p. 2, n. 18), the parish priest gravely sins who delays the Extreme Unction until the sick person is deprived of his senses, for then he is deprived of the effect of obtaining salvation, both of the soul and of the body, which he would have obtained if he had been anointed in time. "Those who," says the Catechism, "are accustomed to observe the time when the sick should be anointed, but only when all hope of salvation is lost, and when life and senses begin to fail, gravely sin." Therefore, Benedict XIV, in the Euchologion of the Greeks, or in the Rituale assigned to the Greeks (see in Bullar. loc. cit. § 46), commands that this sacrament be administered to the sick who are conscious and aware of themselves. This pertains to the obligation of administering the Extreme Unction. But as to whether it can be lawfully administered, the common opinion of the doctors is that it is sufficient that the illness is dangerous to life, even remotely; thus Suarez says: "That from such an illness, death may be morally feared, at least remotely." The same is held by Laym., Castrop., Bonac., Coninch., Salm., and others. The same is said by Benedict XIV (6), and by Honoratus Tourn., who cites the conciliar decrees of Aix-la-Chapelle and Mainz. And this is clearly inferred (1) Lib. 6, n. 729. — (2) N. 750. — (3) In Bull. edit. Mechl. t. 11, p. 532, § 46. — (4) Lib. 6, n. 712 and 713. — (5) N. 713, Dubit. 9. — (6) De Synod. l. 8, c. 7, n. 2.

[*Latin ed. p. 506*]

TRACTATE XVII. CONCERNING EXTREME UNCTION AND ORDER. Firstly, from Florence, where it is said: "The subject of this sacrament is one who is 'in firmum,' that is, suffering from illness, when his death is feared." Secondly, from the Council of Trent, Session 14, Chapter 3, where these words are found: "This unction should be administered to the sick, especially to those who appear to be at the point of death." The word "especially" clearly indicates that extreme unction can also be given to other sick people who are not at the point of death. However, this is further confirmed

by Benedict XIV; in the aforementioned bull, he states that the sacrament of extreme unction should not be administered to those who are in good health, but only to those who are suffering from a serious illness. Therefore, Castr. rightly states that, whenever it is possible to give the Eucharist to a sick person who is not fasting, it is also permissible and beneficial to administer extreme unction. However, Laym. and Castr. rightly state that, in order for extreme unction to be given, it is not enough to have a doubtful danger of death, but at least a probable, or prudent, fear of death; as is commonly held by Suar., Castr., Escob., and Holzm., along with Mastrio and Scoto.

Question 2: Can it be given to those who are giving birth? The answer, according to Lugo, Filiuc., Bonac., Escob., Trull., and others, is that it cannot be given if the woman is only experiencing common pains during childbirth, even if it is her first birth, or even if she has been in danger of death in previous births. However, it can be given if she is suffering from very severe pains, to the point that she actually fears for her life.

Note 2: It is important to note what the Ritual says regarding the repetition of this sacrament: "This sacrament should not be repeated in the same illness, unless it is prolonged, or if the sick person recovers and then falls into danger of death again." Therefore, if the illness is not prolonged, that is, if it is not a severe fever, dropsy, or the like, then it cannot be administered again, unless the person recovers and then falls into another danger of death. However, if the illness is prolonged, and the person remains in the same danger of death, then it cannot be administered again; unless, however, that danger has passed (not after four or five days, but after a noticeable period, as commonly stated by Conin., Suar., Wig., Bonac., Viva, etc.), and then the person falls into that danger again; and this, as rightly taught by Benedict XIV, can be lawfully practiced even in doubt (meaning positively), if the condition of the sick person has changed.

Note 3: Regarding the disposition of the soul, if the sick person is in mortal sin, he must at least have contrite feelings, in order to receive this sacrament. But understand this: if there is no time for confession, then this is sufficient. Otherwise, as rightly pointed out by Busemb., he should first be administered the sacrament of penance, as it is more necessary; therefore, this case is morally impossible, unless it happens that the sick person is deprived of his senses. Furthermore, as the Ritual says, and according to the practice of the Church, if the condition of the sick person allows, extreme unction should not be administered unless he has first confessed and received Holy Communion. However, this sacrament can be received before the Eucharist, and it is either entirely free from sin, or it is at most a venial sin (according to Suar., Croia, and Benedict XIV).

Note 4: Extreme unction is not to be given to children of the age of reason, as stated by St. Thomas (5), and also by the Roman Ritual, because in

children, the form in which the remission of sin is expressed cannot be verified, not the original sin (since that has already been remitted), but actual sin, namely, "May God judge you for whatever you have done, etc." Contrary to this, the opinion of Laym., Nav., Suar., Val., Sa, and Escob. is more common and probable.

(1) Lib. 6, n. 715, Dubit. 5.

(2) De Synod. I, 8, c. 8, w. 4.

(3) Lib. 6, n. 715.

(4) N. 716.

(5) Suppl. q. 52, a. 4.

[*Latin ed. p. 507*]

OF THE EXTREME UNCTION. 495. Pope Benedict XIV (1), against Soto, Wigandt, etc., holds that the Extreme Unction ought to be administered to children who possess the use of reason, even if they are not yet capable of receiving Holy Communion; for the Ritual explicitly states: "This sacrament ought to be administered to the sick who have attained the use of reason." Nor does St. Thomas (in the cited passage) object, where he says that it ought not to be given to children; for there, "use of reason" refers to a different thing, namely, that they are incapable of actual sin. But can children be anointed with this sacrament about whom there is doubt as to whether they have attained the use of reason? There are three opinions on this matter; but the opinion of Lugo, Escobedo, and the Dicastery (2) seems to me to be the most probable, which holds that such children ought to be anointed, provided that it is sufficient cause to prevent them from being deprived of the fruit of this sacrament, should they have already attained the capacity for it. The same should be said of the insane (3).

11. — It should be noted that the Extreme Unction ought not to be administered to the perpetually insane; I say "perpetually," because if they have any glimmer of reason, they can be properly anointed, as St. Thomas teaches; indeed, the Ritual says, "To the sick," meaning those who, while their minds were lucid, requested it, or who would reasonably have requested it, or who gave signs of contrition, even if they have since lost the power of speech, or have become insane, or are delirious, or do not seem to understand; nevertheless, the sacrament should be administered. But if there is suspicion that a sick person suffering from mania might commit something contrary to the reverence of the sacrament, he should not be anointed unless the danger is completely removed. However, Tamburrini (4) probably says that this danger can be removed by binding the sick person or by having him held by others. Those who are drunk and are already dying should also be anointed, as Croix, Gobat, and Lohner say, provided that it is not certain that they are in mortal sin, since the Ritual says: "To the impenitent, and to those who are manifestly in mortal sin,

and to the excommunicated, the sacrament of Extreme Unction is not to be given." However, Coninchon, Tamburrini, Lohner, and Croix say that those who have been wounded in a fight and have lost their senses can be anointed, provided that it can be reasonably presumed that they are repentant for their sins in that extreme state, if the use of reason is found in them. The deaf, the dumb, and the blind from birth are undoubtedly to be anointed, even in the senses in which they are lacking; for although they may not have sinned externally with them, nevertheless they may have sinned in thought; thus, generally, Possevinus, Salamanca, Diana, and the Prepositors, along with St. Charles Borromeo and St. Thomas (5), say, whatever Croix and Gobat may say.

12. — It is now asked whether a sick person is bound to receive the Extreme Unction. The first opinion affirms this, along with St. Bonaventure, Soto, Merbesio, Roncaglia, Habert, and the Council, saying that the words of the Apostle, "Let the presbyters be ordained," imply a grave precept. But the more common opinion denies this, along with Suarez, Navarren, Estius, Silo, Tamburrini, Castrop, Salamanca, etc., to which St. Thomas adheres, who says that this sacrament is not necessary for salvation. Nevertheless, I consider the first opinion to be very probable, and I say that it should be earnestly urged upon the sick, not only for the reason of the precept, since it is not certain whether it obliges under a grave or a light penalty; but because, even if it is not obligatory, other means of charity may be lacking in that state.

(1) From the Synod, book 8, chapter 8, number 2.

(2) Book 6, number 719.

(3) Number 732.

(4) Supplement, question 32, article 7.

(5) Book 6, number 759.

[*Latin ed. p. 508*]

496 TRACTATE XVII. ON EXTREME UNCTION AND ORDER. It is found that, on the one hand, the sick person is weakened, so that he may be able to contemplate the good works of his mind; on the other hand, (as the Council of Trent says), the snares of the devil are then more vehement; hence, it seems that he exposes himself to great danger of succumbing to temptations, who neglects this sacrament, which Jesus Christ instituted for this very purpose, to give strength to resist the devil in that final struggle. However, all agree that, accidentally, the sick person may be held to it under a grave obligation, e.g., if he could not receive another sacrament, and was in mortal danger, or if otherwise he would lead others to believe that he is a heretic, or to despise this sacrament. And it is also certain that such contempt is a grave sin, when it is formal. However, as commonly stated by Suarez, Castrop, Salm., etc., but not by Meric, formal

contempt is understood not when the sick person refuses to be anointed with this sacrament because of some repugnance or negligence, but when he deliberately omits it, because he considers it unimportant. This is confirmed by the bull of Martin V, which states: "This sacrament cannot be neglected without guilt, nor despised without mortal sin." And note here that contempt is rightly noted to imply a grave fault, while negligence implies a lesser fault (1). 13.—Finally, with regard to the administration of this sacrament, it should be noted first that, according to the Ritual, the priest must bring a white linen cloth and a basin, in which seven small balls of cotton are ready to wipe the anointed parts; a candle of wax, the light of which should serve while the anointing is being performed. From the church, he should bring with him at least one cleric, who will bring the cross (but without the staff), blessed water with an aspergillum, and the Ritual; and the priest himself, without the sound of bells, should decently carry the closed oil in a silk pouch of violet color around his neck, as is now the custom, suspended; and if the journey is long, the priest may carry out the extreme unction while riding on horseback. The Ritual notes that if the sick person, after confession, is near death, then the same priest who brings the viaticum can also bring the holy oil. But if another priest or deacon can be present to bring the holy oil, it should be administered by him, who, wearing an alb, follows the priest carrying the viaticum. It should be noted (2) that it is a mortal sin to administer extreme unction without an alb and stole. However, necessity may excuse this, according to Suarez, Castrop, and Bonac.; for (as they say), reverence for the sacrament is to be preferred to private utility. But nevertheless, Posseo, Croix, Escob, Quintan, Diana, and Leand probably affirm that in the case where the sick person would otherwise die without the sacrament, it is not presumed that the Lord would wish the sick person to be deprived of such help because of the lack of sacred vestments (2). Thus, it is also grave, in itself, to omit the prayers prescribed by the Ritual, as all acknowledge; it is also understood to be outside of necessity, because if there is imminent danger of death, the Ritual says that the sick person should be anointed quickly, and then, if he survives, the omitted prayers should be said. It is also understood of the prayers that the priest must say; for the penitential psalms and litanies, along with the following prayers, are to be said by those present while the sick person is being anointed, but it is more probable (contrary to others), as Tamb. says, that they are merely advisable. For the Ritual does not prescribe that they be recited, but only says: "While the sick are being anointed with oil, they are said by those present, kneeling, etc." (3). It should be noted (1) Lib. 6. n. 755. — (2) Lib. 6. n. 726. — (3) N. 727.

[*Latin ed. p. 509*]

OF THE SACRAMENT OF HOLY ORDERS. 497 oil, or to administer it without a light; thus Barb., Possev., Quintan., Escob., etc., or without a min-

ister; indeed, some say, as do Bonacin., Escob., Possev., etc., that there is no sin in this; but I believe that it is blameworthy, since the Ritual says: "with clerics having been summoned, at least one"; hence, it would be venial to anoint without a minister, as Tolet., Dicast., Graff., etc., say; likewise, it would be venial to confer this sacrament omitting the crosses during the anointing (1). Finally, it should be noted that during the time of interdict, it is forbidden to administer this sacrament, according to chapter "Quod in te," on penance.

CHAPTER II. OF THE SACRAMENT OF HOLY ORDERS.

14. Whether any of the seven orders is a sacrament.

15. Whether the matter and form of the sacraments are specifically determined by Christ the Lord.

16. What is the matter of Holy Orders, whether it is the laying on of hands, or the delivery of instruments. (A discussion of other matters pertaining to Holy Orders will be given in the Examination of those to be ordained.)

14. We will speak below, in chapters II and III, of the Examination of those to be ordained, concerning the doctrines pertaining to this sacrament; here, we will briefly discuss three well-known questions that are raised on this subject. The first question is whether any of the seven orders is a sacrament? Four opinions are held:

I. Some affirm it universally, as do Bellarmine, Gonet, Sanch., Salm., etc., and this is the opinion of St. Thomas (2). The sole reason for this opinion is the decree of Eugene IV to the Armenians, in which it is said that the matter of Holy Orders is that by which the order is conferred, and then, for each of the seven orders, it assigns its own proper matter. This does not contradict the fact that the minister of ordination is only the bishop, as is said in the Council of Trent, session 23, chapters 3 and 8; for it is understood that this refers to the ordinary minister, but not to the extraordinary minister, whom the Pope can appoint to confer the orders.

II. Some, with Cajetan and Durand, say that only the priesthood is a sacrament; but this opinion is singular and improbable; for there is no doubt that the diaconate is a sacrament, provided that the three requirements for constituting a sacrament are present in its ordination, namely: 1. a sensible sign, which is the laying on of hands; 2. divine institution; for the Council teaches that there is in the Church a hierarchy instituted by God, consisting of bishops, priests, and ministers, and at least the deacons should be understood as ministers; 3. a promise of grace signified by the words of the bishop: "Receive the Holy Spirit for strength," which are present as the form.

III. Some, with Soto, Nav., and Vasquez, contend that all the major orders

are sacraments.

IV. The opinion that is more probable to us, with Gratian, Peter Lombard, Morin, Estius, Tourn., Gabassut, Habert, and others, affirms that only the priesthood and the diaconate are sacraments. This opinion is supported by the fact that, if the other orders were sacraments, besides the priesthood and the diaconate, they could not be conferred by abbots, as they are now conferred, since the only minister of a sacrament can be the bishop, as Tourn. (3) proves, saying that for ordination, according to divine institution, a bishop is necessarily required in the minister; and he adds that this is proven by tradition, because it has never been permitted, under any urgent circumstances (1) Lib. 6, n. 728. (2) Suppl. q. 37, a. 2, ad I, and a. 5. (3) De Ord., qu. 4, a. 2, conclus. 2.

[*Latin ed. p. 510*]

TRACTATE XVII. ON EXTREME UNCTION AND ORDER. It is necessary to determine whether, besides bishops, others have the power to ordain priests and deacons. And it is answered that there is some doubt regarding a certain privilege allegedly granted by Innocent VIII to the Cîteaux monks, allowing them to confer such orders; this is highly questionable. Even if it were certain, the Sacred Council and even Clement VIII interpreted it as granting the power not to ordain, but to grant dispensations. This is proven by the fact that in other orders, the material element is lacking, namely the imposition of hands, which is the unique material of this sacrament, as we will explain in question 3; and also the form is lacking, since in the conferral of other orders, no form is found that signifies the production of grace, but only mention is made of the power or office conferred upon the ordained. Regarding the decree of Eugene, it is answered that the material elements of other orders are not assigned by the Pope as essential, but only as accidental, to explain the power received (1). From this, Benedict XIV infers (2) that those who are promoted to orders lower than the diaconate with the knowledge of mortal sin cannot be condemned for sacrilege.

15. The second question is whether the material and forms of the sacraments (and especially of the order) are all specifically determined by Jesus Christ? The first opinion denies this, following St. Bonaventure, Bellarmine, Valentini, Morin, Lugo, Salm., etc. The only reason for this is that otherwise, the material and forms of the sacraments could not be different in the Greek and Latin Churches, especially in the sacrament of orders, since in the Greek Church, the priesthood and diaconate are conferred solely by the imposition of hands, but in the Latin Church, in addition to the imposition of hands, the delivery of instruments is required, as expressed in the decree of Eugene IV, as mentioned above. Therefore, they assert that regarding baptism and the Eucharist, Jesus Christ specifically instituted both the material and the forms; but regarding the other sacraments, He instituted

them only in a general way, leaving it to the Church to determine them specifically, using those things and words that would express the effect of the sacrament. This opinion is probable, but the opposite opinion is more probable, which states that the material and forms of all the sacraments were specifically determined by the Lord; thus, Merbes, Habert, Juvenin, Tournely, Petrocor, Concina, and many others, along with St. Thomas (3), who cannot be denied to have been in favor of this opinion, when he says: "Since the sanctification of man is in the power of the sanctifying God, it does not pertain to man to assume, by his own judgment, the things by which he is sanctified; but this must be determined by divine institution. And therefore, in the sacraments of the new law, by which men are sanctified, it is necessary to use things determined by divine institution." Benedict XIV (4) adheres to this opinion, stating that there is no basis for proving that this power was granted by Jesus Christ to the Church, indeed, the opposite is proven from the Council of Trent, session 21, chapter 2, where it is said that the Church can do nothing regarding the substance of the sacraments, but only regarding their administration. Regarding the difference between the Greek and Latin Churches, it is answered that the delivery of instruments is not considered as an essential, but as an accidental, albeit integral, material. And to the decree of Eugene, we respond with Merbes, Tournely, and Concina, that the Pope has not yet determined the essential materials of the order; but only (s) Lib. 6. n. 756 et 787; — (s) De Syn. l. 8; v. 9. n. 12. — (3) 5. p. q. 60. a. 5. — (4) De Syn. l. 8; v. 10. n. 30.

[*Latin ed. p. 511*]

OF THE SACRAMENT OF HOLY ORDERS. 499. He wished to instruct the Armenians concerning the rite of the Roman Church, with which they desired to unite. It is not valid to say that Eugenius was not speaking of the rite, but of the matter; for it is answered that if this were true, it would follow that any order, even the lesser ones, would be certain to be a sacrament, provided that the Pope had designated the matter as such for each one: but even these opponents deny this certainty (1). 16. The third question is, what is the matter of the priesthood, whether it is solely the imposition of hands, or also the delivery of instruments, and what is the form? There are three opinions: I. That of Fagnan, Soto, and a few others, which holds that the matter is solely the delivery of instruments, which the bishop delivers when ordaining; and that the form is the words: "Receive the power" to offer sacrifice, etc., and that with this alone, the power to both sacrifice and to absolve from sins is conferred. They draw the entire meaning from the decree of Eugenius IV, where it is said: "The order of the presbyterate" is conferred through the chalice with wine, and the paten with bread, for the offering. But this opinion is not commonly accepted by other doctors. II. The opinion of Bellarmine, Estius, Scotus, Layman, Salmeron, Concinius, Holzapfel, Vasquez, etc., which holds that there are two essential matters

in the ordination of the priesthood, namely, through the delivery of instruments, the power over the real Body of Christ is given, namely, to sacrifice, with the form: "Receive the power"; and through the imposition of hands, the power over the mystical Body of Christ is given, namely, to absolve from sins, with the form: "Receive the Holy Spirit; whose sins you remit, they are remitted to them." III. The opinion held by Martene, Becan, Tournhem, Juvenal, Petrocor, the Council, and others, with St. Bonaventure, to which Benedict XIV adheres (2), holds that both powers are conferred upon the priest through the second imposition of hands, namely, when the bishop extends his hands over the one being ordained, together with the assisting priests, as declared by the Council of Trent, session 14, chapter 3, on extreme unction, where it is said that the ministers of extreme unction are either bishops, or priests who have been duly ordained by them through the imposition of hands. This opinion is proven: 1. From the Council of Trent, session 23, chapter 2, namely, that from Scripture we are sufficiently taught what is most important in the ordination of priests and deacons; but from Scripture, we have assigned nothing else for the matter of the sacrament of orders, than the imposition of hands: therefore, it must be said that, besides the imposition of hands, nothing else is essentially necessary in the ordination. 2. From the Greek rite, by which they ordain (as has been said) solely through the imposition of hands; since the value of the sacraments essentially depends on the matters and forms instituted by Jesus Christ. Moreover, it is added that Benedict XIV, in the place cited with Martene, notes that the delivery of instruments was not introduced into the Church until the 8th or 9th century. To this, the opposing authors have nothing to answer, except what was mentioned in the second question, namely, that the power to determine the matter and forms of the sacraments in their own species has been left by the Lord to the Church; but this has already been sufficiently answered. But what is the form, according to this third opinion? Some say it is the words: "Receive the power," etc. But it is perhaps more probable, as Morin and Tournhem say, that it is the prayer which the bishop recites in the aforementioned imposition; and the words which are recited at the end, in the third imposition of hands, "Receive the Holy Spirit," are said to be merely a declaration of the Holy Spirit already received. This third opinion is more probable; but (1) Book 6, n. 11. — (2) De Syn. 1, 6, and 10, n. 9.

[*Latin ed. p. 512*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. Because the second [opinion] is also probable, at least externally, therefore it should be followed in practice (1). Everything else pertaining to this sacrament, as was said from the beginning, should be noted in the examination of those to be ordained.

TREATISE XVIII. ON THE SACRAMENT OF MATRIMONY.

CHAPTER I. ON THE ENGAGED COUPLE.

SECTION I. ON THE NATURE OF THE ENGAGED COUPLE.

1. Definition of betrothal. Whether children before the age of seven, etc. He who promises without the intention of obligating himself, or of fulfilling [the promise]. He who, through deceit or terror, etc.

— 2. If a condition has given cause for the contract.

— 3. On betrothals begun through fear.

— 4. Whether the promise must be mutual.

— 5. Whether external signs are required. What if the father promises for the son in the son's presence; and what if for the son's absence?

— 6. Whether, in doubt, freedom should be favored. He who promises for the future, etc. What if a ring is sent, etc.? Is a dispensation required, etc.?

— 7. On minors, etc. On the gestures between betrothed. 1.

BETROTHAL is defined as: "A voluntary and deliberate, and mutual promise, expressed by a sensible sign, of a future marriage between capable persons."

It is called a promise because, 1. a mere intention, not expressed externally, nor accepted, certainly does not obligate (2). It is called voluntary and deliberate, 2. because, for a grave obligation to be induced, which the betrothal promise creates, spontaneous and full deliberation is required. From this, it follows 1. that no one can be held to betrothal unless it is certain that he has the perfect use of reason; but if it is certain, then he remains obligated, even if he was a boy who had not yet completed the age of seven, according to the more probable and common opinion of Sanch, Coninc, Bonac, Salm, etc., against Palaus and others, provided (it must be understood) that such a boy understands in some way the obligations that the married state entails.

It follows 2. that he is not obligated who promises without the intention of contracting, or without the intention of obligating himself, even if he knew the obligation that arises from betrothal, as is more probably said by Sanch, Pal, Laym, Less, Salm, Mazz, etc., against Pontium, Sotum, Vivam, etc.; because when the obligation arises from one's own will, where the will is lacking, the obligation is also lacking. And this is also true if the promise is sworn, as rightly say St. Bonaventure, St. Antoninus, Sanch, Palaus, Salm, Bonaventure, with St. Thomas, because an oath follows the nature of a promise (2). Otherwise, it should be said, if there had been defloration with a fictitious promise, as was said above, treatise 10, n. 93, when we spoke of

restitution (4). He who promises without the intention of contracting, or with the intention of obligating himself, certainly remains obligated, even if from the beginning he lacked the intention of fulfilling the promise (5).

It follows 3. that he is not obligated who promises induced by force, or by the deceit of another, or by error concerning the substance, or concerning a substantial condition, as if he expressly promised under that particular condition: which is common with other contracts; see what was said in treatise 10, n. 124. (1) Lib. 6. n. 749. — (2) N. 851. — (3) N. 855. — (4) N. 852. — (5) N. 855.

[*Latin ed. p. 513*]

OF THE NATURE OF BETROTHALS. 501 2. — It is inquired: 1. Whether betrothals are valid when there is deceit, or when there is error concerning some condition which is not yet substantial, but accidental, but which caused the contract in such a way that, without it, the betrothed would not have entered into the contract? Many doctors say that betrothals are then void; but we maintain the opposite as more probable (1): see the statements in treatise 10, no. 124, where we also said that the deceived party has a remedy to rescind the contract, even if the deception occurred by a third party, unknown to the deceived party, as taught by Sanch. with Covarr. and others. Indeed, Less. Laym. Spor. and Viva, probably, say that if the matter is complete (as it is in simple betrothals), and the error is invincible, the one deceived in conscience is not bound by the contract, not even after a judgment (2). But, maintaining the first opinion, namely, that a contract made with deceit that is the cause of the contract is, in itself, void, does this also release the deceived party from his obligation? We deny this, according to the more probable opinion of Lugo, Pallad., Lessio, Laym., etc., against Sanch., Pontium, etc., based on the general principle that no one should be bound by his own fraud (3). 3. — It is inquired: 2. Whether betrothals contracted under unjust, grave, and external fear are, in themselves, invalid? Some, such as Coninch., Dicast., Viva, etc., say that they are not void, but can be annulled at the will of the party who experienced the fear, as is said of all other contracts, treatise 10, no. 125. But the more probable and common opinion, with Sanch., Pontius, Laym., Bonac., Azor., Sa, Bec., Boss., Salm., etc., holds that they are entirely void, because betrothals follow the nature of marriage, which certainly is not present when it is contracted under fear; therefore, just as no one is bound to contract marriage under such circumstances, so neither can one be held bound by betrothals which are a means to marriage. Consequently, no impediment to public decency arises from such betrothals (4). It is said, however, 1. if the fear is unjust, because if it were just, just as marriage is valid (as we will say later), so also are betrothals (5). It is said 2. if the fear is grave; if, however, the fear is slight, betrothals are binding, according to the more probable and common opinion of Bonac., Pontius, Medin., Salm.,

Croix, Viva, Mazzot., etc. (against Nav., Less., Ronc., etc.), because it is judged that he who, being able to repel the fear, when it is slight, does not do so, is bound (6). However, it is excepted, if such fear, even if slight, gave cause to the contract, as probably say Laym., Sanch., Bonac., Wigandt, Salm., Croix, Lugo, Azor., against Pontius, Viva, etc. This applies even more if someone experienced such slight fear, as if he had apprehended it as grave (7). It is said 3. if the fear is external, because if it were internal (e.g., if someone promised, fearing that he would be forced to pay a debt, or that he would be thrown into prison), then that person is bound by the betrothals (8). 4. — It is said 3. that the promise of betrothals must be mutual. Therefore, if one of the betrothed promises, but the other does not, neither of them is bound; unless the one who promises intends to obligate himself independently of the other's promise; but in that case, he would not be bound by the betrothals, but by the force of a simple promise (9), which, according to the probable opinion based on the authority of St. Thomas (as said in treatise 10, no. 127), obliges only by reason of fidelity, not under a penalty. But here, (x) Lib. 6, no. 855. — (a) Ibid. — (3) N. 335. v. An autem. — (4) N. 844. — (5) Ibid. — (6) Ibid. Quær. II. — (7) Ibid. Quær. III. — (8) N. 1053. — (9) N. 836.

[*Latin ed. p. 514*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY.

1. It is inquired whether one can obligate oneself with betrothal promises under a grave obligation, with a true promise of betrothal, independently of the obligation of the other party? Pontius, Vasquez, and the Council deny this, but the opinion of Sanchez, Laym, Bonaventure, Conin, Sporer, Salamanca, and others is more common and probable (1).

2. It is inquired whether the party who does not renew the promise, but only accepts the betrothal promise of the other, is understood to have obligated themselves? Pontius, St. Antoninus, and Silvaticus affirm this. But it is more probable that Sanchez, Bonaventure, Laym, Conin, Soto, Castrop, and Salamanca, among others, deny this, because the promise of one party can rightly stand without the renewal of the other party's promise; nor does acceptance necessarily imply renewal, since one can already accept the obligation of another without obligating oneself (2).

3. However, it should be noted (as Sporer and Tamburini probably say) that betrothed parties usually do not intend to obligate themselves unless under the condition that the other party also obligates themselves (3).

4. It is said to be expressed by a sensible sign; because silence alone on the part of the betrothed is not sufficient to obligate oneself. The exception is when the father or mother promises for the son, or the daughter, in the presence and silence of the son, as is stated in chapter 1, § at the end,

concerning the betrothal of minors: "Furthermore, the betrothals which parents contract for their children, whether pubescent or not, obligate the children themselves, if they have expressly consented, or tacitly, if they are present and have not contradicted; (4)."

5. However, it should be noted that this applies only with regard to external law; but with regard to conscience, the son is not bound by the betrothal if he internally dissents; as Bonaventure, Roncaglia, Holman, and Anaele say. And I believe that the same should be said if the son neither consents nor dissents, but is negatively disposed; because a positive consent is required to create any obligation. The word "obligate" in the text does not contradict this; because it should be understood (as Bonaventure and Salamanca rightly say), whenever internal consent is present (2).

6. It should be noted that this applies only in the case where the parents promise, and not if others promise, even if they are guardians or curators; because the aforementioned provision of the law only includes parents who promise for their children (6). If, however, such parents promise for a son who is absent, other doctors, such as Sanchez, Pontius, Roncaglia, Estob, Boss, and others, say that it is not sufficient for the son to simply not contradict the promise, but that it is necessary for him to ratify it by some expressed or tacit sign. This opinion is probable; but the opposite opinion is more probable, held by Bonaventure, Paludanus, Castrop, Concinius, Soto, Salamanca, Sporer, and others, which affirms that the son's silence is sufficient when he is absent; and this opinion is also held by St. Thomas (7), who says: "They have strength (betrothals) to the extent that those among whom they are contracted, having reached the proper age, do not object, and are understood to consent to what has been done by others." And it is also proven from the cited chapter 1, paragraph 6, where it is said: "And it is the same if the sons, when betrothed, are absent, and even ignorant of the betrothal, after they have knowingly ratified it, either expressly or tacitly." "Expressly" is understood as externally consenting; "tacitly" is understood as not contradicting, and therefore it is said there: "And it is the same, in so far as it is said that they have ratified, because it is a thing done in the name of another." However, Castrop and Conin note that it is not sufficient if the son happens to know of the betrothal celebrated by the parent, and does not contradict it; but it is necessary for the parents to inform themselves, either by themselves or through another (8).

7. Here it is inquired whether, in case of doubt about the words, or the sign of the promise (1).

(1) Lib. 6. n. 837.

(2) N. 836. Quer. I.

(3) N. 837. in fin.

(4) N. 838.

(5) Hid. v. Id to duen.

(6) N. 838 ci 839.
(7) In A. dist. 27. q. 2 ad 1.
(8) N. 839. Dub. 2.

[*Latin ed. p. 515*]

OF THE OBLIGATION OF BETROTHAL. 503. Concerning betrothals, should marriage be favored more than freedom? Some say marriage, but it is more probable (as Viva says) that freedom should be favored (1). Question 2. Is one bound by the obligation of betrothal who says: "Will you not take anyone else, but only you?" Whatever others may say, the truer and more common opinion, as taught by Laym, Castrop, Sanch, Escob, Boss, Holzm, Salm, Anacl, is that this person is not bound to take another, but is not bound to take that one. However, as Pontius, Viva, and Perez say, one would be bound if the words were in the present tense: "I want no one but you" (2). The giving of a ring or other betrothal gifts does not create an obligation of betrothal, unless it is the custom of the region, as taught by Sanch, Castrop, Conc, Bossius, Busemb, etc., or unless a promise has preceded from the other party, and the other has accepted a ring sent by that party, as commonly taught by Castrop, Bus, Escob, Sanchez, Silvest, Holzm, and others; or if it was sent by the parents with the consent of the one. Betrothals celebrated between those who are subject to some impediment are valid, under the condition that the Pope grants a dispensation, although they are not valid in themselves, they do obligate one to wait until the outcome of the dispensation is seen, if it can easily be obtained (3). See the points mentioned above, point 3, number 15, at the end. 7. It is said that, among capable persons, this means that betrothals are not valid if the prescribed age is lacking, or if there is some impediment between them (4). It should be noted that 1. a promise of marriage made by words in the present tense between the impuberal is valid for betrothals; otherwise, for the puberal who enter into a clandestine marriage, namely without a priest and witnesses; because, since the contract is invalid in itself, as long as the law of Trent (Tridentini) is an obstacle, it creates no obligation. However, this is understood for places where Trent has been accepted; for in other places, betrothals begun by words or signs in the present tense (such as the exhibition of marital affection) pass into marriage (5). It should be noted that 2. among betrothed, not only are impious acts forbidden, but also chaste acts, whenever they are done in order to obtain sensible pleasure, in the same way as they are mortal sins among the unmarried, as said above, treatise 10, number 2; for no betrothed (whatever others may say) acquires a right to the body of the other; therefore, just as intercourse is forbidden to betrothed, so too are touches, which are permitted only insofar as they are ordered to that intercourse; thus, Lessius, Bonao, Roncagl, Conc, Suar, Viva, Croix, Mazzot, and others teach. Betrothed can scarcely be permitted (as La-Croix, Viva, and others say) kisses or embraces that custom of the

country permits, provided they are not pressed, nor prolonged for a noticeable time. Nor is the opinion of those authors probable who say that chaste touches are permitted to betrothed, if they do not intend venereal pleasure, but only sensible pleasure; for in this, there is ordinarily the danger of falling into venereal pleasure, or at least of progressing to improper desires for venereal pleasure (6). And so, it is also gravely forbidden for betrothed to delight themselves in the future intercourse; since that is actually forbidden to them in their present state (7). See what was said above, treatise 3, number 51. POINT II. OF THE OBLIGATION OF BETROTHAL. 8. How and when betrothals are to be fulfilled. 9. What if one promises to two women. 10. Can a son bind himself without the knowledge of his parents. 11. He who is betrothed (1) Book 6, number 840. vi Quando. (2) Number 842. (3) Number 843. (4) Number 840. (5) Number 853, at the end. (6) Number 854. (7) Ibid, at the end.

[*Latin ed. p. 516*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. concerning dispensations, etc. And concerning the penalty imposed on one who withdraws. — 12. Whether a legacy bequeathed under the condition of marriage is due if the person marries, etc., or if they do not marry. 8. — Betrothal certainly obligates to enter into marriage; and if no time is specified, it obligates immediately, according to the more correct opinion of Pontius, Castrop, Roncaglia, the Council of Connich, Salamanca, etc., against Sanchinius, Navarrius, Holzmüller, etc., who contend that it does not obligate unless a part is fulfilled; but our reason is that all obligations, where no term is specified, must be fulfilled as soon as possible, as is expressed in the law: "That which is due without a specified term is due immediately." However, Castrop, the Council of Connich, and Salamanca, etc., say probably that in the case where one party could conveniently insist on entering into marriage, and remained silent, then it can prudently be judged that the other party has consented to the delay (1). This applies to the parties; but with regard to the judge, Sanchinius, with St. Bonaventure, St. Antoninus, Navarrius, the Council of Castrop, Holzmüller, Roncaglia, Salamanca, and others commonly teach that he is not to compel them to marry if scandal or quarrels are feared, as is expressed in chapter 10 on betrothals: "Ecclesiastical censure compels, unless a reasonable cause prevents." And so the Holy See has also declared. And it will always be better, as Busembach, Tambach, and the Council say, to avoid the damage of such a marriage than to avoid the damage to one party: therefore, if one party has ever been excommunicated for this reason, it is advisable for the judge to absolve them, lest it happen that such a marriage has a bad outcome (2). 9. — Note 1. that if someone enters into betrothal with two people, and the second was aware of the betrothal that had been entered into with the first, then marriage must be entered into with the first. If, however, she was unaware,

some doctors say that in the case where there has been intercourse with the second, the betrothed man should take the second; but it is more common and more probable that Navarrius, Sanchinius, Ledwich, Bonacich, Roncaglia, Elbel, Laym, Soto, Holzmüller, Anaclasius, Croix, etc., say that in all cases the first should be taken, because the promise made to the second is always null and void, and is made concerning an illicit thing, since a promise has already been made to the first betrothed, and therefore it is not binding, even if it has been confirmed by an oath. But if intercourse has occurred with the second, should the first yield out of equity? Some affirm; but Holzmüller, Anaclasius, Guttier, and Pichler do not improbably hold that the first is not even bound to do so, since the second betrothed must bear the burden of the disadvantage of such a loss (3). 10. — Note 2. that betrothals entered into by children, without the knowledge of their parents, are certainly valid, as declared by the Council of Trent, session 24, chapter 1, on the reform of marriage, against Luther and Bucer. This is a celebrated question: does a son sin grievously who enters into marriage against the will of his parents? Four opinions are presented on this matter. The first says that the son sins grievously, whether he enters into marriage without the knowledge of his parents, or against their will; and this is because of the grave scandals and damages that will otherwise arise from such marriages; thus Pontius, Sylvius, Navarrius, the Council of Petrocor, and Roncaglia. The second opinion says that the son is bound by a grave obligation to inform his parents, and also to seek their advice, otherwise he would inflict a grave injury upon them; but he is not bound to abide by their advice, since the sons are not bound to obey their parents in all things, as St. Thomas teaches (4), in matters concerning marriage.

(1) Book 6, number 345, see question.

(2) Number 846.

(3) Number 849.

(4) 2-2, question 104, article 5.

[*Latin ed. p. 517*]

Regarding the Obligation of Spouses:

505. Marriage pertains to matters where complete freedom is required; thus, Vasquez, Sanchez, Barbatus, Laym, Bonaventure, Filliu, Vivar, and others. The third opinion states that whenever marriage does not bring dishonor to the family, and there is no just reason for the parents to object, the son does not sin gravely if he takes a wife or marries without the knowledge of his parents; for he is not bound to follow their counsel, and therefore, it cannot be a grave obligation for him to consult them; thus, Castrop, Bossius, Holzmuller, Salmeron, Pichler, Elbel, Covarrubias, Renzi, Ledo, Victor, Henry, Sporer, Averbeck, and the Dicastery.

The fourth opinion, in agreement with the third, distinguishes and states

that if the parents justly forbid a particular marriage to their son, for example, because it would bring dishonor or scandal to the family, then the son would sin gravely if he entered into that marriage. And in the case where it would bring dishonor to the family, he is not bound by the betrothal contracts, even if they are sworn, and he may break off the engagement, even if he has already dismissed the bride, provided he can provide her with a dowry if possible; for justice cannot obligate one to perform an act that cannot be commanded without sin. Conversely, they say that if the father unjustly prevents the marriage; thus, Laym, Delbare, and Aversa (1).

Furthermore, all the doctors generally agree to excuse the son in the following cases: 1. If the father unjustly forbids the choice of a spouse, and the son is in danger of incontinence. 2. If the son is unjustly harassed by his parents. 3. If the father is far away, and the son can prudently assume his consent. 4. If the father prevents a marriage that is suitable for his son's condition; for in such a case, the father would be sinning, and the son would not be bound to obey him, as generally stated by Sanchez, Palearius, Soto, Corduba, Bossius, Guttierrez, Rebel, Vivar, and others. 5. If the father wants to give his son a wife who is unworthy, infirm, or of bad character (2).

The question arises: Is the son bound to obey a parent who commands him to enter into a marriage, or to take a wife from whom he abhors? Most generally deny this; but Laym, Sanchez, Bellarmine, Soto, Petrocorio, Croix, Bossius, and others generally except if such a marriage would cause a grave enmity to be resolved, or if the parents would be relieved from great poverty by it; but this is understood only when the son is obligated to enter into the state of marriage. It should also be understood that this does not apply when the son has a very strong and intolerable aversion to the woman. Charity cannot obligate anyone to the point of having to live their entire life with a wife whom they notably abhor (3).

11. — Note 3: A party who voluntarily withdraws from betrothal promises loses the betrothal gifts and is still bound to return those received, along with compensation for all damages resulting from his withdrawal. Therefore, it must be noted that a promise of a penalty imposed on one who withdraws from betrothal is unlawful and invalid, as stated in chapter Gemma, on betrothals, where it is said: "Since marriages must be free, and therefore, such a stipulation, because of the imposition of a penalty, is rightly to be condemned, etc." Therefore, in such a case, the one who withdraws is not bound to pay the aforementioned penalty, even if he had affirmed the promise with an oath (4). And if the penalty has ever been paid, the one who received it is bound to return it, as the more probable opinion of Castrop, Soto, Bossius, Guttierrez, Hurtado, Salmeron, and others holds, against Sanchez, Lessius, Escobar, Molina, and others, because they have no title to retain it; since the law completely invalidates such a promise, as expressed in l. fin. cap. de sponsal. where it is said (1)

Lib. 6. n. 849. — (2) Ibid. v. Conveniunt. — (3) N. 850. — (4) Lib. 3. n. 855.

[*Latin ed. p. 518*]

596 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. A promise of punishment from either side will have no force (1). However, this applies when the punishment is imposed by the betrothed, or by those joined to them, or by friends; otherwise, if it is imposed by an outsider, as commonly noted by Sanc. Castr., Salm., etc. (3). Furthermore, this applies if the withdrawal is just; but if the withdrawal is unjust, it is a probable opinion of Sanch., Bonac., Boss., Conc. Becan., etc., that one should not be held to such a punishment, because otherwise, the freedom of marriage would suffer some injury; however, the opposite is more probable, according to Pontius, Laym., Castropal., Suar., Vasq., Salm., Anacl., Ronc., Holzm., etc., because the aforementioned promise of punishment is not prohibited, either by natural or positive law: not by natural law, since it is just to impose punishment on one who withdraws unjustly; but the freedom that is required in marriage is a rational freedom, not an irrational one; otherwise, a judge could never compel betrothed persons to marry by censures or imprisonment; nor by positive law, for (as Pontius states) in Novella 18, the imposition of punishment on one who unjustly withdraws from betrothal is expressly approved. And the canonical text in chapter Gemma, mentioned above, should be understood as referring to a just withdrawal, and not to an unjust one (3). It should also be noted that Benedict XIV, in the bulla *Nimiam licentiam*, on May 18, 1743, condemned and declared invalid agreements made between spouses regarding not appealing a judgment concerning the nullity of marriage, so that in no forum should they be binding, neither internally nor externally, under the penalty of excommunication reserved to the Pope, except in articulo mortis.

12. — But it is asked here, if a legacy is left to a girl on the condition that she marry a certain young man, is it owed to her if she marries another? It is answered: speaking in general terms, it is not owed, as we have from L. Titio, § 1 ff., on conditions and demonstrations, since she remains free to accept or reject such a marriage. But it is excepted: 1. if it would otherwise deny her a legitimate marriage. 2. If that marriage were unworthy, because then such a condition is considered to be scandalous; thus, commonly, Laym., Mol., Ronc., Vasq., Salmant., Boss., etc., with Rot. Ronc. But if the betrothed were worthy, but the father of the girl wished her to marry another, Pontius, etc., says that the legacy is not owed to her, according to the opinion he holds, that the daughter does not sin by marrying a worthy person, even against the will of her parent; however, many others, such as Bos., Sanch., Mol., Coninc., Gutt., etc., hold the opposite, saying that since the girl cannot marry against the will of her parent, she should not be deprived of the legacy (4). But if a legacy is left to a woman on the condition that she not marry, and she marries, if she is a virgin, the legacy

is still owed to her; otherwise, if she is a widow (5).

SECTION II. ON THE DISSOLUTION OF BETROTHALS.

13. Betrothals are dissolved: I. by marriage with another. Whether the guilty party remains obligated — 14. II. By mutual consent, even if an oath has been taken. What about minors? — 15. III. By a supervening impediment. Whether one is obliged to seek a dispensation. — 16. Does disparity of birth dissolve betrothals? — 17. Does disagreement of parents? — 18. IV. By a grave offense. Does this include fornication? And does such fornication contain a different kind of malice? — 19. V. By a notable change, e.g., hatred, alienation, illness, etc. Does this include a new inheritance? What if a better opportunity arises, etc.? — 20. VI. By departure to a distant region. — 21. VII. By the expiration of a term. — 22. VIII. Does this include a religious profession, or the taking of holy orders? Does this include entry into a monastery, etc.? — 23. What if, before entering—

(1) Lib. 8. Quær. III. — (2) N. 853. — (3) Ibid. Quær. I. — (4) Lib. 6. n. 853. Quær. IV. — (5) L. 3. n. 930. v. Dubit. 7.

[*Latin ed. p. 519*]

ON THE DISSOLUTION OF ENGAGEMENTS. 307, etc. — Whether one who enters into a sacred engagement sins. — 25. Whether a vow of chastity, or the reception into religious orders, dissolves an engagement, etc. — 26. Whether the authority of a judge is required, etc. — 27. What proof is required, etc. 13. — ENGAGEMENTS ARE DISSOLVED for the following reasons: I. because a valid marriage has been contracted by one of the parties (1). This is certain with regard to the innocent party; but it is doubtful whether the guilty party remains free from the engagement due to a marriage contracted by themselves. Sanc. Bonac. Laym. Wigandt, and others, incline towards this view; but the opposite opinion is held by Pontius, Castr., Concina, Ronc., Sylvius, Salm., Ledesma, etc. I consider the latter opinion to be absolutely more probable, because such a dissolution is not approved by either positive or natural law; for natural reason dictates that the obligation of the engagement, during the marriage, is only suspended, not extinguished (2). 14. — II. Due to the mutual consent of the betrothed. But it should be noted that among adults, such mutual consent dissolves the engagement, even if it has been confirmed by an oath; it is understood, provided there is a just cause, otherwise the betrothed would sin; not grievously, but lightly, as say Sanc., Ronc., Nav., Holsm., Salm., etc., although the oath was primarily made for the honor of God; because in all oaths that benefit the neighbor, there is always an implied condition, unless it is waived by the party (3). However, among those who are not yet of age, the engagement is not dissolved by mutual consent, unless they reach the age of majority; as is stated in chapter De illis, de sponsal.

impub. Therefore, a person who has not yet reached the age of majority, upon reaching the age of majority, can withdraw from the engagement; provided they immediately declare their intention: this immediately, is understood within three days, which begin not from the time of reaching the age of majority, but from the day on which the other party becomes aware of the possibility of withdrawing. If the betrothed disagrees even before reaching the age of majority, and persists in their disagreement; then the engagement is dissolved as soon as that person reaches the age of majority: provided that they have made this disagreement known; as is the opinion of the more probable view of Ronc., Castr., Sutar., Conc., etc. (against Sanch., Bonac., etc.), because such a benefit is not granted unless it is claimed, which is undoubtedly understood externally (4). Whether a betrothed person, upon reaching the age of majority, can withdraw, even if the engagement has been confirmed by an oath, is denied by Bonac., Sanchez, Ronc., etc. But it is more probable that they can, as affirmed by Pont., Castr., Concina, Viva, Palud., Salm., etc., because the oath follows the nature of the contract, or the engagement, which among those who are not yet of age, are revocable: nor does the chapter Litteris, de sponsal., object, because, as observed by Castr., Pont., and Viva, it only speaks of those who are approaching the age of majority, as the text expresses, namely, those who are close to the age of majority; who are rightly considered as adults, and this view is also agreed upon by Sanch. with others (5). 15. — III. Due to a subsequent impediment. But here, distinctions must be made regarding impediments: if the impediment is merely hindering, the more probable opinion is, and it is the most common one with Sanch., Castropal., Palud., Bonac., Coninc., etc. (against Soto), that the engagement is not dissolved; unless the impediment is due to a vow of religion, and also, probably, of chastity, as will be said below in number 25. If, however, the impediment is absolute, it is certain that the engagement is dissolved with regard to the innocent party, even if it is nothing more than a reputation among the majority of the neighborhood; otherwise, with regard to the guilty party, according to the more probable opinion and the common opinion of Sanch., Castr., Coninc., and Guttier (against Dicast.), from that general rule, (1) Lib. 6. p. 575. — (2) Ibid. v. Quæritur. — (3) N. 953. — (4) N. 856. — (5) Ibid. Quær.

[*Latin ed. p. 520*]

508 TRACT. XVIII. ON THE SACRAMENT OF MATRIMONY. No one can derive any advantage from their own fault (1). Therefore, in this case, the betrothed party who has incurred an impediment is obligated to seek a dispensation, as often as possible, and within a reasonable time; otherwise, it would require great expense, or great effort, and time. And he is obligated to use ordinary means, not extraordinary ones, as is more probable according to Sanchez, Bonaventure, Guttmann, Wigandt,

and Sporer, against Castrop, Roncaglia, and Salm, who maintain that he is obligated even if the expense were excessive. However, Sporer, with Tamburini, rightly argues that an exception is made if the betrothed party is obligated to enter into marriage in order to repair the damage of defilement or the shame of the betrothed (2). And if, perhaps, an impediment arises at the time the betrothal is celebrated, and these celebrations are held with the agreement to obtain a dispensation, then it is permissible that the betrothal is not valid before the dispensation is obtained, and therefore does not constitute an impediment to public decency; nevertheless, the betrothed parties remain obligated to await the outcome of the condition; and betrothals entered into with another person would be null, as say Sporer and Roncaglia, with the decree of the Sacred Congregation. And we say with Sanchez, Roncaglia, Lugio, Layman, Bona, Salm, Castrop, etc., that with a dispensation obtained, such betrothals are valid without a new consent, provided that the consent previously given still persists (3); see below, number 34, 16.

Here is a question: 1. Does a notable disparity in condition between the betrothed parties constitute a valid impediment to dissolve the betrothal? The answer is that if the disparity was unknown at the time of the contract, the betrothal is certainly null. Otherwise, if it was known: unless such a marriage could not be entered into without a notable disgrace to the family, for example, if a nobleman were to marry a peasant woman, or if he were to marry a woman who was a servant; thus, generally, Layman, Sanchez, Panormo, Roncaglia, Sporer (4). And the same is said if the betrothed was much wealthier, because in that case, the promise of betrothal does not obligate as a prodigal act, since no one is ever obligated to perform an illicit act, even if it is only venially illicit, according to the more common and truer opinion of Soto, Prados, Bannier, Suarez, Salm, etc. (5). However, this is understood (when speaking of a disparity in wealth) only if the betrothed party was not endowed with a particular privilege of nobility, honor, prudence, or beauty, which would compensate for the lack of wealth, and only if there was no defilement, or if the shame of the betrothed would not remain if the marriage did not take place (6). The doctors say that even if the marriage is not a disgrace to the family, and it would not be permissible to enter into it, if they feared damages or hatred among the parents. But considering that the obligation not to enter into this marriage in this case would only be an act of charity, I do not know how the betrothed party could be excused from not entering into such a marriage, in order to avoid hatred among the parents; unless such a marriage would give rise to common disturbances among several families in a small town, so that it could somehow be judged to be a common evil to the entire region (7).

17. Here is a question: 2. Is disagreement among the parents an impediment so powerful that it can dissolve a betrothal? The answer is: If the parents disagree unjustly, the son cannot withdraw from the marriage, since

canon law clearly states that the consent of the parents is not of the essence of the validity of marriage, but only of honor. Otherwise, it should be said, if the parents are just (1) Lib. 6, n. 857. — (2) N. 938 and l. 3, n. 650. — (3) Lib. 6, n. 859. — (4) N. 851 and l. 3, n. 645. Dubit. 3 and 2. — (5) Lib. 6, n. 851, v. Sed quid, et seq. — (6) Ibid. v. Juxta. — (7) Ibid. v. Ad id.

[*Latin ed. p. 521*]

ON THE DISSOLUTION OF ENGAGEMENTS. 509, it may be opposed, as when such a marriage would be a disgrace to the family, or a scandal to the parents: Laym. Nav. Sanc. etc., or, as Roncagl. says, if the son justly feared being deprived of his paternal inheritance, provided that he did not foresee this danger when he entered into the engagement (1). 18. – IV. Due to a grave offense committed by one of the parties, such as if one of the betrothed committed heresy, or murder, or a serious theft, or another crime that would cause him great harm, or disgrace. However, if the crime were fornication, a distinction must be made between the man and the woman. As for the woman, it is certain that the man is absolved if she has been carnally known by another, even unwillingly, according to the common and more accurate opinion of Sanch. S. Antonin. Sot. Concin. Navar. Pont., etc., and as is stated in c. Raptor. 33, can. 27, q. 2, where it is permitted for the betrothed man to repudiate the betrothed woman who was ravished; or if she herself permitted herself to be defiled. On the contrary, as for the betrothed man: whether he committed fornication before or after the engagement, it is more commonly and probably said by Sanch. Pont. Castrop. Salm., etc., that the woman cannot withdraw. However, the aforementioned authors, along with others, rightly make an exception if, after the engagement, the woman learned that the man had had children from another woman, or had frequently fallen into this vice, having intercourse with many (2). There is doubt among the doctors as to whether fornication between betrothed persons has a different malice that changes the situation? There are three opinions, all of which are probable. The first affirms it for both the woman and the man; because an injury is inflicted on the right to the body of the other: thus Castr. Laym. Salm., etc. The second affirms it only for the woman, not for the man, who does not seem to inflict a serious injury on the woman by committing fornication: thus Sanch. Bonac. and Fill. The third, also probable, denies it for both, because neither betrothed acquires a right to the body of the other: thus Pont. Trullen. Covar. Vival., and Sanch. Laym. Lug. Salm. Elbel, etc., call it probable (3). And whether or not a betrothed woman, considered a virgin, is obligated to disclose her defect, if such is the case? See the following section. 19. – Due to a notable change that arises, such as: 1. a grave fear of hatred between the betrothed (known by one of the other's harshness), or among the parents; thus Bonac. Laym. Busemb. 2. If it is discovered that one of the betrothed is burdened with excessive debts, or if the woman

does not have a dowry; Sanch. Tol. Pont. Bon. Spor., etc. 3. If one of the betrothed contracts leprosy, paralysis, dropsy, or another similar ailment by which he becomes deformed, or unable to support the family, Sanch. Conin. Layman, Bonac., and others commonly with St. Thomas (4): and it is sufficient that a prudent suspicion is held about this (5). And if, at the time of the engagement, one of the parties had some hidden personal defect from the aforementioned or from his family, which would render the marriage harmful to the other party who is unaware, that party cannot enter into the marriage unless he reveals it. It is said "harmful" because if he revealed it, the marriage would be less desirable; for example, if the woman was considered rich, beautiful, or a virgin, and later she was not, unless she pretends to be free from such a defect, she is not obligated to reveal it, but may conceal it, because then she is not pretending, but concealing her vice: nor is anyone obligated to reveal their infamy, when it does not injure the right of another; thus, commonly Sanch. Pont. Castrop. Coninc. (1) Lib. G. n. 827. – (2) N. 868 et seq. – (3) N. 847. – (4) Suppl. q. 45. a. 2. ad 3. – (5) Hib. G. n. 863.

[*Latin ed. p. 522*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. Ronc., Salm., Escob., Croix, and others, against Concinus (1). In order to judge what cause can dissolve betrothal, these two rules must be observed. The first is that, for causes arising after the betrothal, it suffices that those causes would have prevented the contract from being entered into had they been foreseen; hence, the party not affected by such a cause remains bound, it being presumed that they entered into the contract under the condition that such a change would not occur, which, had it been foreseen, would have prevented the contract. The second rule is that, for causes existing before the betrothal, it suffices that those causes would prevent the contract from being entered into if they were to arise. Therefore, if ignorance of such a cause did not prevent the contract, but rather accompanied it, that is, if it had been known, the betrothal would still have been entered into, then the betrothal cannot be dissolved; thus, Sanch., Ronc., Castrop., Salm., and others commonly hold (2). But the question arises whether, if one of the betrothed receives a large inheritance, the other can withdraw from the betrothal? Hurtad., Trull., Leand., and others affirm, stating that this notably changes the condition of the betrothed. But others, such as Sanch., Boss., Comit., Castrop., Escob., Concina, Ronc., and others, deny this, because in that case, the other party is not deceived in the condition of the other, in which no change has occurred. Therefore, Croix says that if the betrothed discovers that the other is in a better condition, they cannot abandon the first; but in this case, where the condition is much better, I would not dare, with due caution, to condemn the betrothed who wishes to marry a second, because the loss of great profit is equivalent to

great damage, as stated above in tractate 6, no. 22, and I find that many theologians have said this in the Life of St. John of Capistrano, chapter 9, no. 20.

VI. Due to the departure of one of the parties to a distant region; hence, if the betrothed were to move to another domicile, or to set out for a distant place, even with the intention of returning, the betrothed is released from the promise, and can marry whomever they wish, as expressed in chapter 5, on betrothals, where it is said: "Those who promise under oath to marry certain women, and afterwards, without their knowledge, leave the land, transferring themselves to other regions, it will be permissible for the women to transfer themselves to other vows." But if the betrothed were to move to nearby regions with the intention of returning, then the betrothed either must wait for the return, or must require the betrothed to return; and if the betrothed continues their absence, either they must wait until a reasonable time, according to the judgment of a prudent person, or (as others say better) they must seek a judge, so that a term may be set (3). This applies when no term has been set in the betrothal; because if a term has already been set, it should be noted that what will be said below in no. 21.

VII. Due to the expiration of a term previously set; nevertheless, it is understood that there is a time set for fulfilling the obligation; and then the innocent party remains free, even if they had promised betrothal under oath, as all hold with St. Thomas (4), and it is expressed in chapter 22, on betrothals, where the Pope condemned the betrothed who, after entering into betrothal with one, had contracted with another: "Unless (he added) a term was set, and by that term he did not stand firm until the established term for the marriage was consummated." Therefore, if he had not stood firm by it, he would have justly withdrawn (5). And this applies even if the term has expired due to the fault of the other party, but without fault, as Laym., Castrop., Nav., and others commonly and probably contend (1).

(1) Lib. 6, no. 664.

(2) No. 863, see.

(3) No. 866.

(4) In 4. d. 22, q. a. 2, 3, ad 2.

(5) Lib. 9, no. 667.

[*Latin ed. p. 523*]

OF THE DISSOLUTION OF ENGAGEMENTS. 511. Conc. Conc. Salm. Ronc. (against Bonac. Pont. Vivam. Sanch., etc.): and this is clearly deduced from the very text cited (1). Whether, however, one who has broken off the betrothal through his own fault is released even after the term has elapsed, Ronc. and Conc. affirm, and this opinion does not seem to be implausible, for St. Thomas expressly holds it (2), saying: "If he remains,

he must do penance for the sin of the promise made, and he can (enter into a marriage) with another, if he wishes." But, considering the matter carefully, and according to the more common opinion of Pont., Sanch., Laym., Navar., Castrop., Conin., Salmant., Palud., etc., the opposite seems much more probable, because no one should derive an advantage from his own fault. Furthermore, if the fault lies with both parties, it is certain that both are released after the term has elapsed (3). 22.—VIII. By reason of a religious profession or the reception into Holy Orders, betrothal is certainly dissolved, even if it is confirmed by an oath (3). It is asked: 1. Whether, upon entering religion, both parties remain free, the one who enters and the other? Busemb., Sanch., Bon., Tol., etc., affirm this. But I consider the opposite to be absolutely more probable, which is the more common opinion, with Laym., Spor., Pont., Castrop., Croix., Conin., Viva, Gonet, Salm., and many others, that only the party who remains in the world remains free, while the one who enters religion seems to have relinquished his right; but the party who enters religion does not become incapable of contracting marriage. However, the opinion of those who say that both parties remain free does not seem sufficiently probable (5). 23.—It is asked: 2. Whether, if the betrothal has been sworn, the betrothed man is bound to contract marriage before entering religion? Sotus, Navar., Led., etc., say that he is bound to contract marriage; but before the consummation of the marriage, he may, if he wishes, enter religion. But the opposite opinion is more common and truer, according to Pont., Sanch., Petrocor., Castr., Bonac., Holzm., Spor., Salm., etc., because an oath is always understood to be made under the condition that, unless a more perfect state is chosen. In only one case is the first opinion to be held, when the celebration of the marriage would be necessary to legitimize a child already conceived, or to repair a scandal or infamy to the betrothed woman. And in that case, the betrothed man would not be permitted to enter religion, leaving the marriage valid, as Busemb. observes (6). This is confirmed by what was said above, in section 10, paragraph 97, where we said that if the betrothed man, even if he had vowed chastity (or religion, as the doctors cited there say), and afterwards defiled the betrothed woman under the promise (even a feigned one) of marriage, he is bound to seek a dispensation from his vow, in order to bring the marriage to effect. But if the betrothed man, after the betrothal, but after removing the defilement, vowed to enter religion, he is undoubtedly bound by the vow, and is not bound by the betrothal unless he were to leave religion. But if the vow were also of perpetual profession, then certainly both parties remain free, because then he who vows becomes entirely incapable of marriage, as Salmant., Viva, etc., assert with certainty (7). 24.—It is asked: 3. Whether the betrothed man sins mortally if he is ordained to the priesthood without the knowledge or consent of the betrothed woman? It is certain that the ordained man is free from the betrothal, according to the Extravagant, de voto. There is doubt in this matter, whether he sins

mortally; some affirm it, because it is as if he were to re- (1) Lib. 6. n. 868, ← (2) In 4. d. 37. p. 2. a. 3. ad 3. ← (3) Lib. 6. n. 868; Dubit. 3. ← (4) N. 86g. (5) N. 870. v. Hinc. ← (6) Ibid. Dubit. 3. ← (7) N. 876.

[*Latin ed. p. 524*]

512 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. It is permitted by canonical law (as they wish) for those betrothed to withdraw, but not to embrace a state contrary to the ecclesiastical state. Nevertheless, the opinion to the contrary, held by Pont., Nav., Conin., Bonac., Gutt., Sot., Sylv., Salm., Escob., Henriq., etc., is highly probable, based on the reason given above, because in the promise of betrothal, there is always understood a condition, namely, unless a better state is chosen (1). However, if one of the betrothed were to begin with the minor orders, the other cannot, for this reason, withdraw, according to the more common and truer opinion of Sanch., Pont., Palud., Wigandt, Salm. (whatever Ronc. and Spor. may say), since the minor orders do not impede marriage, and even married clerics are admitted to them (2).

25. — Question 4: Is a vow of chastity, or of being initiated into the sacred orders, valid, and does it dissolve the betrothal, even for the one who makes the vow? I say "for the one who makes the vow," because the other party is undoubtedly freed. I say "after the betrothal," because if the vow were made beforehand, the betrothal would be void, since the promise of something illicit is void. Therefore, the doubt lies in whether the vow follows the betrothal. Some say that it is probably null, because it is made in prejudice of a third party; thus, Laym., Nav., Castrop., Cabass., Ronc., etc. But others, more commonly, as Pont., Petrocor., Suar., Gonet., Conin., Sot., Azor., Bon. hold, that it is valid; and the aforementioned authors, Laym., Sanch., Castr., Cabass., and Salm., along with St. Thomas (3), say that "betrothals are dissolved by a vow." The reasoning of the Angelic Doctor is that when two obligations concur, the stronger one should be preferred; but the more common reasoning of the others is as stated above, namely, that the promises of betrothal are always understood to be made under the condition that a better state is chosen. Therefore, there is also a certain decision of the Sacred Congregation, found in Pittonium (4), dated March 5, 1701, which states that a vow of chastity, or of receiving the sacred orders, dissolves even already-made betrothals. Bonac. and Sanch. add that the one who made the vow should remain free from the betrothal, even if he later obtains a dispensation from the vow, and this is not entirely improbable, but it seems to me more probable that the opposite is true, according to Rebell., Aver., and Salmant., because the prior obligation is not completely extinguished, but is suspended until the vow is observed (5).

26. — Question 5: Must the authority of a judge always intervene to dissolve a betrothal? The answer is no, because the betrothal was public,

and the cause is also public and certain; the same should be said if the betrothal was hidden, and the cause is hidden. However, if the cause is not certain, but is doubtful, whether of law or of fact, then the authority of a judge must certainly intervene; thus, commonly, Sanch., Castrop., Holzm., Gut., etc. If the betrothal is public, and the cause is hidden, then if the cause cannot be proven in court, a judge is not required; but if it can be proven, then a judge is required, but not under a grave penalty, unless it is to avoid a grave scandal, as the aforementioned doctors say with Nav. Pont. and others commonly. If the defect could be proven, but was hidden, the innocent party should warn the other; and then, if the other does not agree to dissolve the betrothal, the innocent party may lawfully bring the defect to the attention of the judge, according to Laym., Pont., Sanch., Castrop., Conin., etc. (6).

27. — Question 6: What proof is required to dissolve a betrothal? The answer is: if the cause is concerning some impediment (whether it is di-
(a) Book 6, n. 872, — (a) N. 872. — (3) Supplement, q. 55, n. t. ad 7. — (4) De matrim., n. 2616. — (6) Book 6, n. 875, Dubit. I. — (6) N. 879, Dubit. I.

[*Latin ed. p. 525*]

OF THE MATTER, FORM, ETC. 513 mind, or impediment) then any sworn witness suffices, provided he is credible, as is stated in chapter [referring to a chapter on testimony and attestation]. This holds true even if the witness is a criminal and has not been summoned, but is merely presented by one party; and even if he were to testify in secret, using his own name tacitly, as Sanch[ez], Castrop[us], Salm[anticensis], Coninc[hus], Holzm[annus], Viva, Croix, Gutt[erus], etc., state (1). However, if the cause is not an impediment, but rather another sufficient reason for one of the parties to be released from the betrothal, then, as commonly stated by Sanch[ez], Laym[bertus], Castrop[us], Salm[anticensis], Coninc[hus], etc., two witnesses are required (2). In chapter [referring to a chapter on testimony], two sworn witnesses are required when dealing with the harm to a third party. Nevertheless, Palud[anus], Aver[bacchus], Salm[anticensis], and Trull[ius] probably hold that even one credible witness suffices in the case where he testifies to the betrothed woman's fornication. Furthermore, this applies to the civil court; but in matters of conscience, it is the common opinion that only one witness is sufficient in all cases; as stated by Sanch[ez], Castrop[us], Croix, Coninc[hus], Salm[anticensis], etc.

CHAPTER II. OF MARRIAGE.

POINT I. OF THE MATTER, FORM, AND MINISTER OF MARRIAGE.

28. What is the matter, form, and minister of marriage?

29. Objections. Can the betrothed simulate? Concerning clandestine marriages. Are they valid? Is the presence of a priest required, etc.?

30. Of the impediments to marriage.

31. Is mutual consent through signs sufficient?

32. Of marriage by procuration, or by letter.

33. Of conditional consent.

34. If the condition is fulfilled, is a new consent necessary?

28. It is the common opinion among doctors that the ministers of marriage are the contracting parties themselves. The matter is the mutual transfer of rights, whereby each acquires the other's body, expressed through words or signs indicating consent. The form is the mutual acceptance, expressed by the same words or signs. However, Canus, Juvenin[us], Conc[ilium], and Tournely object, stating that the minister of marriage is the priest assisting, and the form is the words: "I join you in marriage, etc." But our opinion is held by Bellarmin[us], who calls it the common opinion in the schools (as does Canus himself), as well as by Gonet, Frassen[ius], Cabass[us], Ronc[inus], Abel, Wigandt, Van-Espen, Pontas, Petroc[ius], Benedic[tus] XIV, Fagnanus, who calls the opposite opinion dangerous to the faith, Merbes, who asserts that the opposite opinion has never been probable, and Henriq[uez] Manuel, Sotus, who call it rash. In support of our opinion, Scot[us] and St. Thomas (3) also stand. And that the betrothed, and not the priest, are the ministers of marriage is proven: 1. from Florence, where it is stated that the efficient cause of marriage is the mutual consent of the betrothed; therefore, they are the ministers. 2. It is proven from the Council of Trent, session 24, canon 1, where it is stated that marriages were formerly considered valid even without the presence of a priest, namely, as indissoluble; conversely, it is proven elsewhere from chapter [referring to a chapter on divorce] that marriages of the faithful are valid because they are a sacrament: "Although marriage (these are the words of the text) exists among the unfaithful, it is not nevertheless valid. Among the faithful, however, it exists truly and validly, because it is the sacrament of faith (namely, baptism), which, once received, is never lost, but makes the conjugal sacrament valid" (1) Lib. 6, n. 878. Dubit. 2. (2) Ibid. v. Si vero. (3) See in 4. d. 26. p. 4. m. 24. and S. Tao 3. in 4. d. 26. q. 2. a. 1. ad x. and d. 28. q. 1. a. 3.

[*Latin ed. p. 526*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. » and, that it may endure during the marriage. » Therefore, baptism, not the parish priest, effected the valid sacrament of marriage at that time, so that it was indissoluble, just as the character of baptism is indissoluble. This argument is strongly upheld by Benedict XIV (1). 3. It is proven by the fact that the words: "I join you," etc., as testified by Martene and Simonetus

apud Bened. formerly were not said, but others were used, and they prove this from several ancient rituals: but if the words spoken by the priest had been the *forma* of the sacrament, as the opponents claim, those words must always have been the same, or at least equivalent. Add that the Council of Trent permitted the parish priest to use other words, according to the rite received in each province. 4. It is proven by the same Council, loc. cit., where it is upon the words: "Those who attempt to contract marriage otherwise than in the presence of a parish priest... are rendered incapable," and it is decreed that such contracts are void and null. » Therefore, there is no marriage if it is done before a parish priest, even if he is silent; but only if it is done in his absence; and therefore, his words, which the opponents suppose to be the *forma*, are not necessary, and consequently, the priest is not a minister of marriage. (2). However, despite these things, I do not dare to call the opposite opinion, namely that the parish priest is a minister of marriage, which is held by William of Paris, Canus, Toletus, Maldonatus, Estius, Juveninus, Tournely and Collet, his continuator, Natalis Alexand. Conc. and others, improbable, especially since Benedict XIV, in his work on the Synod (3), calls the latter very probable. 29. — Furthermore, from our first opinion, which we consider at least more probable, it follows that 1. the parish priest, by assisting at a marriage, does not sin as a minister, but only as a cooperator in the sacrilege of others, as we said in tractate 14, n. 6. It follows 2. that the spouses who contract marriage in a state of mortal sin commit two sacrileges, one because they receive the sacrament, the other because they minister in sin, although, according to a probable opinion, this may not be a grave sin, because the spouses are not ministers consecrated to this sacrament, as Concina, Tournely, Gonet, and others with St. Thomas (4) say; although in the cited passage we have maintained the opposite. But can a bride lawfully marry a public sinner? See the words in tractate 14, n. 6 (5). But can one simulate the celebration of a marriage, for a just reason, e.g., if some impediment is involved, and one cannot omit such a simulation without serious harm? Father Milante denies; but generally, Sanch. Castrop. Conc. Card. Coninc. Viva, Croix, Henriq., etc., affirm; for they say that since there is neither a contract nor a sacrament present due to the lack of consent, there is no reason why the simulation of the sacrament should be forbidden (6). It follows 3. that the spouses must be in the state of grace, even when they contract marriage through a procurator, because since there is a true contract, there are true sacraments; Bellarm. Sanch. Navar. Sot., etc. (7). It follows 4. that clandestine marriages, namely, those celebrated in the presence of a parish priest who refuses to assist and give his blessing, are gravely illicit, but are valid, and true sacraments. Hence, Father Ferraris, in the Bibliotheca, verb. Matrim., art. 1, n. 31, states that the Holy See has declared that the presence of the parish priest is sufficient for the validity of the sacrament, without him saying any words. Therefore, it must be noted that marriages cele- (1) Bened. XIV.

de Syn. l. 8. c. ix. n. 3. — (2) Ibid. 6. ex n. 897. — (3) Bened. XIV. loc. cit. n. 6. (4) See l. 6. n. 3a. v. Infertur s. et p. 54. — (5) N. 55. v. Si autem — (6) N. 69. — (7) N. 884.

[*Latin ed. p. 527*]

OF THE MATTER, FORM, ETC. 515. If a marriage is contracted before a parish priest, it is null, unless the priest, having been present, had not heard or understood anything, provided that he had not intentionally failed to hear or understand; thus decreed the Holy See. It is stated: "A marriage is not valid unless it is understood, unless the priest himself has intentionally failed to understand." 5. It follows that a parish priest, by assisting at a marriage, does not commit a grave sin, because he does not confer the sacrament nor administer it, according to Sanchez, Bona, Suar, Conc. Reg., etc. However, it must be noted that if he omits to pronounce the words "I join you," he commits a mortal sin, as the more probable opinion of Barbosa, Rebell, Henric, etc., holds, because he omits a grave ceremony of the Church. 6. It follows that marriages celebrated before a parish priest and two witnesses, with a hidden impediment, are validated by a dispensation, and become true sacraments by the renewed consent of the spouses (from which, however, the Pope can dispense, see no. 81); the presence of the priest is not required; thus, generally, Navar, Fagnan, Nat. de Alex, Habert, Tournhem, Sanchez, Card. Soto, Lambardi, Salm, and others (contrary to Comitiis and Concilils) hold. And thus the Holy See has declared, and thus is the practice of the Holy Penitentiary, according to an oracle of Pope Pius V, who, when consulted (as reported by Cardenas), declared that the priest and witnesses are not necessary, when the marriage has already been publicly begun; and indeed, the Holy Penitentiary, in granting a dispensation, says: "So that both may secretly enter into a contract" (1). And this argument, as Benedict XIV says in the cited passage, strongly supports the idea that the minister of marriage is not the priest, but the spouses themselves; otherwise, the Church would never allow spouses to remain in danger of remaining without the grace of the sacrament. However, there is a decree of the Holy See dated June 8, 1619; in Ferraris, Bibliotheca, vol. 5, v. Matrimonium, art. 2, no. 19, which states that if a marriage is null due to a public cause, namely, lack of age, it must be revalidated before the priest and witnesses. 30. Here, several things must be noted. 1. Regarding the essential elements of marriage, there are two intrinsic elements and two essential elements: the mutual giving of bodies, and the indissoluble bond; whoever contracts these elements, excluding one, for example, either with the intention of not fulfilling the debt, or of contracting temporarily, contracts a null marriage (2). However, whether one commits a venial sin who contracts marriage principally as a remedy for concupiscence, affirm Bossius, Navar, Concilils, along with St. Thomas (3). But it is more probable that Castrop, Pontius, Roncaglia, Cajetan, Croix, Concilils Holzm, and

many others deny this, because they adhere to what the Apostle said: "For fear of fornication, let every man have his own wife." 1 Corinthians 7:2. As Estius, Salm, and Cornelis, along with St. John Chrysostom, explain, "for fear of fornication" is not to be understood as avoiding the fornication of another's spouse, but one's own. And this is proven by what the Apostle says in chapter 7, verses 1 and 2: "It is good for a man not to touch a woman; but for fear of fornication, let every man have his own wife." See that he first advises celibacy, but then, as a remedy for incontinence, urges the incontinent to take a wife; therefore, he is speaking there of one's own incontinence; and then he adds: "But if they do not contain themselves, let them marry. For it is better to marry than to be burnt." 1 Corinthians 7:9 (4). And thus, it is also more probable that Pontius, Castrop, Cajetan, Concilils, Salm, etc., hold that marriage is not contracted with culpa if it is principally for another reason (1) Lib. 6, p. 1110. (2) N. 683. (3) Suppl. q. 49, s. 5, ad 2. (4) Lib. 6, n. 683, v. Dubit. 1.

[*Latin ed. p. 528*]

516 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. which has an accidental extrinsic purpose, e.g., to maintain the dignity of the family, to promote peace between two families, etc. (1). However, if someone enters into marriage with the intention of obligating themselves, but later denies that obligation, or with the intention of avoiding the procreation of offspring, they would commit a grave sin, but the marriage would be valid: provided that such an intention is not expressed in the contract, as was the case in the marriage between the Blessed Virgin Mary and Saint Joseph (2). 31. — Note 2. It should be noted that the words used are not essential to the validity of the marriage, but rather signs that express consent are sufficient, as is clear from chapter 25 of *De Tuæ Fraternitatis* on betrothals (3). And a sufficient sign would be if the woman extended her hand to the man, after he has already expressed his consent; otherwise, if she simply does not retract her hand after the man has taken it. Just as the giving of a ring or the bringing of the bride to the man's house is not sufficient, unless it is customary in that place for such signs to express consent; so too, according to Sanchez, Pontifical of Salamanca, and others (4). We say that it is venial sin to wish to express one's consent only through signs and not to use words, unless there is a valid excuse of modesty (5). 32. — Note 3. It should be noted that if a marriage is celebrated through a proxy, and the person giving the mandate were to revoke their consent (even internally) before the marriage is contracted, the marriage would be null. However, the question arises: would it be valid if the person giving the mandate did not have the intention of contracting the marriage when they gave the mandate, but did have the intention at the time of the contract? Some say that the marriage is not valid, because a mandate, which was null when it was given, cannot

be subsequently validated by internal consent; thus, Castrop and Coninck. I do not find this opinion entirely improbable: but the opposite opinion is more common, according to Sanchez, Bonaventure, Roncaglia, Salamanca, etc., and it is also more probable, because the proxy, in contracting the marriage, does not express the prior will of the person giving the mandate, but rather their present will at the time of the contract, which is already present (6). However, in order for a proxy to validly contract a marriage, many things are required. 1. That the mandate must be special. 2. That the person with whom the marriage is to be contracted must be specified. 3. That the proxy must contract the marriage themselves (not through others) in the presence of the parish priest and witnesses, expressing the mandate; which is sufficient if it has been given orally, as say Castropal, Sanchez, Salamanca, Gutteriez, etc. 4. That the proxy must not exceed the conditions specified in the mandate, e.g., regarding time, dowry, etc.; otherwise, the marriage is null. But if he contracts the marriage without the bishop's permission, or without the required announcements, the marriage would be valid; so say the common doctors (7). In such marriages, the parish priest should ask the proxy: "Do you, in the name of N. N., take Tita as your wife?" and then, to the woman: "Do you, in the presence of this proxy, take N. N. as your husband?" It is also possible to contract a marriage by letter, and this is how it would be done: the groom writes to the bride that he takes her to himself, and from that moment, he accepts her as his bride. The bride replies to the groom; and this reply is read in the presence of the parish priest and witnesses. Furthermore, it is also sufficient if the groom writes to the bride as stated above, and the bride, without replying to the groom, opens the letters in the presence of the parish priest and witnesses, and gives her consent; thus, Sanchez, Villalobos, Dian, Salamanca (8). 33. — Note 4. It should be noted that if the consent is conditional, and the condition is either about the past or the present, and the condition has already been fulfilled, or (1) Lib. 6, n. 885. — (2) N. 881 ad 5, and n. 882 in fin. — (3) N. 887. — (4) N. 889. — (5) N. 888. — (6) N. 886. — (7) N. 886. — (8) N. 886.

[*Latin ed. p. 529*]

ON THE MATTER, FORM, ETC. 517. It is verified that, if there is such agreement, it is sufficient to contract the marriage. Likewise, it is sufficient if the condition were to be of the future, but necessarily, for example: "If your father dies"; thus, all agree with St. Thomas; provided that it is not understood that the agreement is suspended until the father's death; Ronc. Salm. Conc., etc. But if the condition is of a contingent future, it must again be distinguished: if the condition were scandalous, or contrary to the substance of marriage, for example, against the sacrament, against conjugal fidelity, or against the procreation of children: if it were said, for example: "I want you, if you avoid having children; or if you commit adultery"; or

if it were said: "I take you as my wife, as long as I find someone better"; then the marriage is null. But if the condition is scandalous in another way, or if it is impossible, then it is considered as not added; and the marriage is valid, chapter end, on appended conditions, where it is said: "If conditions contrary to the substance of marriage are inserted (according to the examples given above), the matrimonial contract lacks effect; although other conditions, if scandalous or impossible, must be considered as not added." The reason is that it is presumed that consent has been given, notwithstanding the condition imposed. But if the spouses truly did not intend to consent without such a condition, the marriage would also be invalid. Furthermore, in case of doubt, it must be judged in favor of the one, as taught by Sanch. Pont. Ronc. Holzm., etc., from chapter end, on sentences and judgments (1). 34. - On the contrary, if the condition of the future were honest, then the matrimonial contract would be null, but only the betrothal. But it is asked whether, once the condition is fulfilled, a new consent is required for the marriage? Some affirm, as Suarez Pont. Sot. Conc. Gonet and others, to whom St. Thomas is favorable (2), who says: "Or (the condition) is contingent, as the acceptance of parents, and then it does not make the marriage." The reason for this opinion is that marriage is not only a contract, but also a sacrament, the value of which cannot depend on a future effect. However, others deny, as Laym. Bonac. Castr. Salm. Coninch., etc., because marriage, although it is also a sacrament, has the nature of a contract, and its value is directed according to the norm of this nature. This second opinion seems more probable; but since the first is also founded, it is advisable to follow it in practice. And the same must be said in the case where the spouses are hindered by some impediment, and they themselves have contracted under a condition: if a dispensation is obtained, and this has been declared by the Holy Congregation (3). It should be noted here that the condition suspends the marriage, which does not suspend the demonstration, or the cause, or the manner attached. The demonstration is when it is said: "I take you, who are a virgin, noble, etc." The cause is when it is said: "I take you because you are a virgin." The manner is when it is said: "I take you so that you may serve me as a servant." And this manner does not suspend, even if it is of an impossible or scandalous manner; thus, Sanch. Salm. Viva, because consent does not depend on the manner, as it depends on the condition. P. Viva adds with Castrop, that even if the manner is contrary to the substance of marriage, for example, "I take you so that you will commit adultery, etc." But it is more probable that Sanch. and Salm. contradict, because it does not seem to have the intention of contracting, who has an intention entirely opposed to the contract (4). If, however, a day is added, for example: "I take you after 10 days," it is more probable and common that Viva, Coninc. Perez, Salm., etc., against Sanch., say that the consent is suspended until the term is reached (5). (1) Lib. 6. n. 890 and 891. - (2) Suppl. q. 47. a. 5. - (3) See

P. Zacch. adnot. ad Crpix. l. 6. p. 3. n. 83. - (4) Lib. 6. n. 896. - (5) Ibid. v. Utrum.

[*Latin ed. p. 530*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. POINT II. ON LAWFUL USE OF MARRIAGE. 35. The use of marriage is illicit. I. if the marriage is null; II. if it is doubtful: whether it is permissible to contract marriage with a doubt of impediment. — 36. Whether it is permissible to ask for, or to grant, when there is a doubt. — 37. What if the marriage has been contracted with a doubt. — 38. III. If there is a danger to health. — 39. IV. If only for pleasure, etc. V. If with an adulterous intention, etc. VI. If only improperly. — 40. If a spouse withdraws from procreation. — 41. VII. If in an improper place. VIII. If at an improper time, namely, during pregnancy. If a spouse is impeded by a vow, or by incest. — 42. Whether sensual touch and pleasures are permitted to married couples. 35. — THE USE of marriage is, in itself, lawful, but for several reasons it sometimes becomes illicit, and I. if the marriage is certainly null, in which case it is never permissible for the party who knows this to ask for, nor to grant, the due debt to the other who is ignorant (1). II. If the marriage is doubtful. But here, the question is raised: whether it is permissible to enter into marriage with a doubt of impediment? Generally, the Doctors teach, Sanchez, Suarez, Castres, Cardinal Croix, Bossuet, Holzmüller, Viva, etc., that, after due diligence has been used, it is permissible to contract marriage with a probable opinion of the absence of impediment. Nor does it matter that in the sacraments it is not permissible to use a probable opinion: for in the sacrament of marriage, as we said above in tractate 1, number 27, and as the authors commonly teach, standing as it does on a probable opinion, the Church is considered to dispense in the impediment, if it should happen to be present (2). However, it should be noted 1. that this applies only if the opinion is probable in law (that is, based on the authority of Doctors), and not merely on fact, as Cardinal Viva, Croix, Aversa, etc., say against Bona and Tanquerey (3), because a probability of fact does not constitute a true probability, but only a conjecture, which it is not permissible to use to contract marriage; unless such a presumption, in the case of the absence of an impediment, might present some kind of moral certainty (4). It should be noted 2. that this applies only to impediments of ecclesiastical law, and not to those of natural law, in which the Church cannot dispense; therefore, if there is doubt about the death of the former spouse, it is illicit to enter into a new marriage, unless it is certainly and morally known that the former spouse is dead, as is stated in chapter "Dominus," on second marriages (5). Only in a very rare case is an exception made, in which the Pope, as interpreter of divine law, for a most urgent reason, declares that marriage can be contracted, notwithstanding such a doubt, as Cardenas reports that Urban VIII declared in a certain case (6). But whether, in cases

of ecclesiastical impediments, when they are doubtful, the bishop can dispense? Several grave Doctors commonly and probably admit this, Castres, Calassans, Barbatus, Roncaglia, Holzmüller, Bona, Salm, and Elbing (7), as will be explained in tractate 20, on private impediments, number 57 (8). 36. — It is doubted 2. whether, once marriage has already been entered into, and there is an urgent doubt about its validity, it is permissible to ask for, or to grant? While the doubt remains, the spouse who doubts cannot even ask for the marital act until due diligence has been used to resolve the doubt; but he is bound to grant the other spouse who asks in good faith (9). This is clear from the cited chapter "Dominus," on second marriages (10). The reason is that the other spouse still possesses the right to ask for the marital act: understand, however, that this is after one month from the beginning of the marriage, and provided that the spouse who doubts is not impeded from asking for the marital act by incest, or by the crime of adultery (11). We said "until due diligence has been used," because if the spouse who doubts entered into the marriage in good faith, and after due diligence he could not resolve the doubt, (1) Lib. 6, n. 900. — (2) N. 901. — (3) N. 902. Question III. — (4) Ibid. Question II. — (5) Ibid. Furthermore. — (6) N. 905. — (7) N. 905, at the end. — (8) Ibid. — (9) N. 905. — (10) Ibid. — (11) Ibid.

[*Latin ed. p. 531*]

ON THE LAWFUL USE OF MARRIAGE. 519. It is highly probable and commonly held that one may also petition for nullity, having already acquired the right to petition, as stated by Sotus, Wigandt, Hab. Castrop., Suarez, Lessius, Lugo, Laym, Roncaglia, Sanchinius, Salmeron, and others (contrary to Navar and the Council). Therefore, Sanchinius, Anaclasius, Cardinal Henriquez, and others teach that the spouse who has diligently investigated the matter may lawfully petition, always and certainly, if there is no certainty of an impediment, even if there is some probability to the contrary (1). 37. It is doubted whether, if a marriage was contracted with doubtful faith, the spouse who doubts may petition after due diligence, even if the doubt persists. Some deny this, arguing that it is not lawful to use a thing which is possessed with doubtful faith; and this opinion is more common among Sanchinius, Castrop, Salmeron, Roncaglia, and others. However, Holsm and Elbel state, not improbably, that although the one who doubts cannot set aside the doubt based on the title of possession, he can, nevertheless, rely on another principle, namely, that in doubt, one must rule in favor of the act, especially marriage, in whose favor one must always judge in doubt, both in external and internal matters. However, this does not apply in the case where there is doubt about the death of the former spouse, as we saw from the cited chapter, *Dominus*. I say "doubt," for if there is firm probability regarding the validity of the marriage, then the doctors Sanchinius, Bonaventure, Bossuet, Roncaglia,

Salmeron, Sporer, and Croix commonly teach that it is permissible for such a one, after due diligence, not only to refuse conjugal relations, but also to petition for nullity, since the aforementioned text speaks of the case of doubt, not of probability, and if one doubts about the life of the former spouse, one also doubts about the possession of the present spouse (2). When should one doubt or not doubt the validity of a marriage? There are three rules: first, ordinarily speaking, a spouse is not obligated to believe that the other party falsely consented, even if the party asserts this under oath, as stated by Bonaventure, Sanchinius, Sotus, Salmant, and others, from chapter *Cum a nobis*, concerning witnesses. Second, if one hears of an impediment from people who are not worthy of trust, or from a rumor originating from no certain source, one is not obligated to believe it. Third, if one hears from a trustworthy person, or from a rumor originating from a certain source, one is obligated to inquire into the truth, and in the meantime, to abstain from marriage or from petitioning; but one is obligated to refuse conjugal relations if there is only one witness, as stated by Navar, Silvestri, Salmeron, and others (3). Furthermore, in doubt, one must always judge in favor of the marriage, as commonly stated by Sanchinius, Pontius, and others (4). 38. III. The use of marriage is not lawful if there is a grave danger to health, nor does the danger of incontinence excuse one. However, it is probably lawful if the disease is chronic, such as leprosy, consumption, the French disease, and similar ailments, provided that it is not such that it tends to death in the near future; and provided that there is some just cause; as stated by Sanchinius, Cajetan, Pontius, Laym, Bossuet, Busenbaum, Bonaventure, and others. Furthermore, a person suffering from such a disease is obligated to disclose it to the other party who is unaware, if he petitions, and even if he wishes to refuse conjugal relations; for if he does not, he may lawfully deny the debt, since he is not obligated to disclose his disease (e.g., the French disease) with his shame, as stated by Tommaso and Sotus (5). It is not lawful to petition immediately after a bath, or after a venesection, or when suffering from a fever; as stated by Sanchinius, Bonaventure, Bossuet, and others. However, it is lawful to petition from a spouse who suffers from a flux of seed, or gonorrhea, if the flux is continuous; otherwise, if it is malicious, and there is no imminent danger of incontinence in either party (6). Coitus after a meal probably does not cause a grave detriment; therefore, the wife is not excused from fulfilling her duty at that time, since she is obligated to fulfill her duty even with a slight inconvenience (7). Whether it is lawful to... (1) Lib. 6, n. 306 and 907. (2) n. 909. (3) n. 908. (4) n. 907. (5) n. 909. (6) n. 918. (7) Ibid. It seems.

[*Latin ed. p. 532*]

520 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. Concerning the use of marital relations during the time of lactation? Pontius de-

nies this, if a prudent fear for the well-being of the offspring is present; but Sanch (1) allows it. Concerning the time of menstruation? It is permissible, if the menstruation is extraordinary and prolonged; but not if it is natural; but then it will probably not be more than venially illicit; as is commonly held by St. Anthony, Navar, Concina, Pontius, Sanch. And the same is said concerning the use during the puerperal cleansing; provided that it not be done on the same day as childbirth, or the following day (2). 39.—IV. The use is illicit (but not more than venially) if it is employed solely for pleasure, unless the pleasure is directed towards the good of procreation, or to render the husband fit for procreation, as Croix and Viva rightly state (3). V. If it is exercised with an adulterous mind. To excite oneself to the use by contemplating sacred images would be a grave irreverence. However, it is dangerous to delight in the beauty of another person, and especially in the act of intercourse with someone other than one's spouse, among certain known individuals (4). VI. If it is done in an improper manner, namely, outside the natural union, which will undoubtedly be mortal, and more grave if it is done in a preposterous manner, even if only the beginning of the union is initiated there, as is more truly said by Sanch, Pontius, Castrop, Bonaventure, Spor, Bossuet, and the common opinion, contrary to Navar and Anglerius (5). Or if it is done in the natural union, but in an improper manner or position, such as standing, sitting, or in the manner of beasts, or if the man is supine. However, this is only venial, according to the common opinion of the Doctors, St. Anthony, Navar, Petrocorsius, Albinius, Masius, Gers, Cajetan, Soti, Castrop, Sanch, Tolosa, Roncaglia, Salamanca, Croix, etc., from St. Thomas, because a change of position does not in the least impede generation, since the woman's womb draws the man's seed to itself. The aforementioned authors add, with Concina, that it is no sin if it is done for a just cause (6). Whether it is mortal to change position, if, because of this, some seed is accidentally spilled, the Salmanticenses affirm, but commonly Sanch, Pontius, Castrop, Bossuet, Perez, Hurtado, and Aversa deny (7). 40.—Here it is doubted 1. whether spouses sin gravely if they withdraw from the act of procreation after the act has begun? Commonly Sanch, St. Anthony, Layman, Pontius, Cajetan, Lessius, Salamanca, etc., deny this, if it is done by mutual consent, and without the danger of spilling seed; which, however, as Sanchez says, is ordinarily present (8). If, however, the wife has already conceived, or is close to conceiving, the husband sins gravely if he withdraws; unless, perhaps, he does so to avoid death, or the scandal of others: the same authors commonly (9). If, however, the man has already conceived, some, as Sanch, Pontius, Salamanca, etc., excuse the wife if she withdraws. Others, as Bonaventure, Cajetan, Abulensis, Major, Aversa, Hurtado, etc., do not excuse her, saying that the woman's seed is simply necessary for generation; and since this opinion seems sufficiently probable, it should be followed, since it is not permissible to follow the opposite opinion when there is a probable danger to the offspring, or to gen-

eration (10). It is doubted 2. whether it is permissible for the wife, immediately after the man's seed has been emitted, to excite herself with touches in order to conceive? Diana and Rodriguez deny this; but commonly Wigand, Lessius, Sanch, Bonaventure, Filliucius, Salamanca, Spor, Bossuet, Elbel, and many others affirm it, and neither does Concina disapprove; and for the same reason mentioned above, because the woman's seed is necessary, or at least greatly contributes to generation; for nothing is futile in nature (11). 41.—VII. If the use is had in an improper place, such as a public place, or

[*Latin ed. p. 533*]

ON THE LAWFUL USE OF MARRIAGE. 521. But is the conjugal act also forbidden in secret within marriage? See the statements above in treatise 9, on the sixth commandment of the Decalogue, no. 21. VIII. If it is done at an improper time. Several things must be noted here: 1. To ask for intercourse before Communion is venial (unless it is requested to avoid incontinence); to give or request it after Communion is not sinful; see the statements in treatise 15, no. 57. Likewise, spouses do not sin, as the common doctors teach, if they have intercourse on feast days; and even if they ask for it, the common teaching of St. Bonaventure, Soto, Cajetan, Pontius, Sanchez, Azor, Castrop, Bona, Salm, Valent, Conin, etc., is that it is not forbidden by any law; and if any of the holy Fathers seem to forbid it, they speak of counsel, not of a precept, as Sanchez proves (1). At least, as Benedict XIV says in the Synod, book 5, chapter 1, no. 3, if it was once a precept, now certainly it is not so unless it is counsel. 2. During pregnancy, the use of intercourse is, as commonly taught, only venial (provided that there is no danger of abortion, which is ordinarily not present); and it is not sinful if there is a danger of incontinence, or another just cause (2). 3. A spouse who is forbidden from asking for intercourse by a vow, or by an impediment of affinity contracted after marriage, can, and indeed is obligated, to give intercourse if the other is in danger of incontinence, or if it is requested interpretively, that is, when the woman (as St. Thomas says) is modest (in a particular way than other women), and the man perceives her will to give intercourse; and so it is commonly taught by others. Furthermore, if the spouse himself is hindered (understand here only by reason of affinity, not by a vow) and is in imminent danger of incontinence, and the danger is imminent, he can also ask for intercourse; so Viger and Quintanad. Indeed, it is probable that if a dispensation cannot be obtained quickly (3). 4. Certainly, it is permissible for a spouse to ask for intercourse from a spouse who is excommunicated; and according to the more true opinion, it is permissible even for the excommunicated spouse, if there is a danger of incontinence; so Suarez, Bona, Sanchez, Bossuet, etc., commonly (4). 42.—Here are some questions: Are indecent touches, or lascivious pleasures, permitted to spouses? Answer: 1. Indecent touches, if they are ordered

towards intercourse, are undoubtedly permitted to spouses; but if they are not ordered towards intercourse, as commonly and more truly taught by Soto, Cajetan, Tolosa, Vasquez, Lessius, Laym, Sanchez, Castrop, Abulafia, Armitage, Bona, Salm, Concina, etc. (contrary to some), they are only venial, because the marital state excuses them from mortal sin (5). Except if the spouse is bound by a vow of chastity; or if there is foreseen a pollution (even if involuntary) in himself, or in the other; as say Soto, Castrop, Cajetan, Bossuet, Salm, etc. Then, only the one asking can be excused, if the indecent touch is to prepare himself for intercourse, with the danger of consent to pollution avoided: so Sanchez, Filliucca, Sporer, Escobar, Elbel, etc. And if the danger of imminent pollution is from a modest touch, the touch cannot be used, even with the danger of consent avoided, unless it is done for a grave reason, such as to foster mutual love, etc. This is about the one asking: but the one giving in such touches seems always to be excused, unless they are so indecent that they appear as the beginning of a pollution (6); see the statements in the following point, no. 48. Answer: 2. It is probably a grave sin for a spouse to touch himself indecently for pleasure, both because of the danger of pollution, and because spouses have no right to touch themselves, except only to prepare themselves for intercourse; so Laym, Diana, Sporer, Salm, etc., against Sanchez, Castrop, Bossuet, etc. (7). (1) Book 6, no. 924. — (2) No. 924. — (3) No. 930. — (4) No. 931. — (5) No. 935. — (6) No. 934. — (7) No. 936.

[*Latin ed. p. 534*]

522 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. Response 3. Regarding pleasures, spouses should be encouraged to abstain from sensual pleasures derived from intercourse, whether it has occurred or is about to occur, if one partner is absent, but they should not be condemned for mortal sin, as commonly stated by Sanch, St. Antoninus, Bonaventure, Suarez, Gretser, Cajetan, Filliu, and Croix, along with St. Thomas (1). This exception applies unless the pleasure is taken with some act, not merely carnal, but also venereal (2). PARAGRAPH III. ON THE OBLIGATION TO FULFILL THE MARRIAGE ACT. 43. When is a spouse obligated to solicit? — 44. If he denies it once or twice. — 45. If more children are born than they can provide for. — 46. If one asks in a state of mortal sin. — 47. If the man wishes to sow outside of his wife. — 48. If he asks with lust. — 49. If he asks out of anger or while intoxicated. On the impediment to soliciting due to incest. If there is a danger to health or offspring. — 50. If a spouse prevents the act of generation. If the wife rises or urinates. Can a young woman expel semen? If an elderly man frequently discharges semen outside of his wife. — 51. On cohabitation, and on the food owed to the wife. 43. — It is necessary to distinguish here between solicitation and fulfillment. As far as solicitation is concerned, neither spouse is, in itself, obligated to solicit, unless there is a foreseen

danger of incontinence in either of them. However, it is sufficient for the wife to solicit tacitly, so that the husband is obligated to approach her; thus, all agree with St. Thomas (3), who says: "When a man perceives through certain signs that his wife desires to fulfill her duty, he is obligated to fulfill it." Conversely, they say (Sanch, Sot., etc., from the same St. Thomas) that the wife is not obligated to perform the act unless the husband expressly solicits her. The exception is: 1. as stated by Sanch, St. Antoninus, Navarrus, etc., if the embarrassment is on the part of the husband, for example, if the wife is of higher social standing or of great authority (4). Exception 2. if the husband is in danger of incontinence, as we have said; but since this is more likely, according to Sanch, Coninch, Paludanus, etc., the wife is obligated by charity alone to solicit, it could easily be excused if she suffered great shame in doing so (5). 44. — However, as far as fulfillment is concerned, a spouse who denies the other their due ordinarily sins gravely. However, it is doubtful 1. whether it is a mortal sin to deny the act once or twice? If the other party asks mildly or easily yields to the pleadings of the one who is denying, then, according to common opinion, it is not a mortal sin (nor even a venial sin, if there is a valid reason), unless the other party is in danger of incontinence, and there is no serious reason for denying. However, if he asks seriously and insistently, Castrop, Tamburrini, Bossuet, Croix, etc., believe that it is a grave matter, unless he asks immoderately, for example, four times in the same night. Others, such as Pontius, Sanch, Bonaventure, Hurtado, and Ledesma, etc., consider it to be a lesser sin, and it does not seem entirely improbable if the other party is not in danger of incontinence. Thus, Pontius, Sanch, and others commonly excuse a spouse who defers the act from day to night or from night to morning (6). 45. — It is doubtful 2. whether it is a just reason for denying the act if more children are born than they can provide for? Some deny it (Layamon, Roncaglia, and Sporer), because procreation is related to the primary purpose of marriage. Others affirm it (Sanchez, Pontius, Bonaventure, Bossuet, etc.), because in all debts, great difficulty excuses from payment. However, they except if the one who is asking is in danger of incontinence; therefore, since this danger is unlikely to be absent, the first opinion seems more to be followed (7). 46. — It is doubtful 3. whether a spouse is obligated, or whether he can fulfill the request of the other spouse while committing a grave sin? This must be distinguished. If the fault is on the part of (2) De malo q. 15. a. s. ad 17. — (2) Lib. 6. N. 937. — (3) Supph. q. 44. a. 2. — (4) Lib. 6. n. 925. — (5) N. 929. — (6) N. 940. — (7) N. 941.

[*Latin ed. p. 535*]

DE THE USE OF THE PRECEPTS OF MARRIAGE. 523. Acts, for example, if a husband requests this in a sacred place, or with danger of abortion, scandal, or the health of either party, the wife is bound to refuse under

serious circumstances; for then the husband has no right to request it. Thus, generally, Sanchez, Pontius, the Council of Bordeaux, Salm., etc., with St. Thomas (1). However, if the fault lies with the one requesting, for example, if he has a vow, or requests for a wicked purpose, the prevailing opinion, with Pont. La-Croix, and a few others, holds that it is not permissible for him to grant it, unless he is in a position to absolve himself from the fault, for example, if he were requesting it for pleasure or for some other evil purpose. But the common and more probable opinion, with Suarez, Lugo, Tournhem, the Council of Laym, Bordeaux, Salamanca, Castr., etc., teaches that he can and is bound to grant it, because the one who has made a vow retains the right to request it (2). However, the one granting is bound, as Sanchez, Bossuet, Concina, etc., point out, to warn the other to desist; but if he refuses to desist, it is advisable for him to anticipate the request; but the wives are rarely bound to do so (3). However, if a spouse requests this from an incestuous person who is already deprived of the right to request it, the other is not bound, but can grant it, since the right to both request and grant always belongs to them; thus, Sanchez, Castr., Bordeaux, St. Anton, Salamanca, etc. (4). 47. — It is doubted (4) whether it is permissible for a wife to request or grant to a husband who desires to sow outside the womb after a completed coitus? Some deny it because she is bound to prevent the husband from sinning. Others affirm it, because she is cooperating in a licit act. But I think a distinction must be made between requesting and granting: In granting, even though it is probable, with Roncaglia and Elbel, that the wife may refuse the duty, and may even be bound to do so, if she can without serious inconvenience, according to the first opinion; because the husband, when about to abuse the thing due, has no right to it: however, it is more probable, with Sanchez, that after warning, she is bound to grant it, because the fault lies not with the act itself, but with the person, as we said above (5). In requesting, we say, with Roncaglia and Elbel, that the wife cannot request this from such a husband, because she is bound by charity to prevent him from sinning. Unless she has a serious reason for requesting it, namely, if she were in danger of incontinence, or if she were otherwise obliged to abstain from her right to request it; for charity does not impose such a burden, and therefore she is not bound to abstain, except in very few cases (6). See the statements in a similar case, above, treatise 4, no. 28, end. 48. — It is doubted (5) whether a spouse is bound to grant the request of one who is requesting with a venial sin? Some affirm, others deny; but, as above, I think a distinction must be made: if the coitus is illicit on the part of the one requesting, namely, if he requests it for pleasure, or before Communion, the other is bound to grant it. However, if it is illicit on the part of the act itself, for example, if he requests it in an unnatural position, or during menstruation, or during the puerperium, etc., then the other may grant it, if there is some reason, e.g., to avoid incurring the other's anger; but she is not bound, unless the one

requesting has a just reason for requesting it in that way or at that time (7). 49. — Then, there are several other things to note. It must be noted (1) that, according to the most common opinion, there is no obligation to grant the request of those who are loving or drunk, because these are incapable of the right of dominion, unless they are in danger of prodigality of seed, or if they are not universally loving, or completely drunk; thus, more probably, Sanchez, Castr., Bordeaux, Council of Laym, Soto, Croix, Busemb., Conc., etc., against Navarr and Sylv. Furthermore, it is generally admitted that it is permissible to grant to these, if there is no danger of scandal or abortion (?). Lib. 6, no. 945, v. Certum. — (2) No. 944. — (5) Ibid, v. Bene autem. — (4) No. 945. — (5) No. 947. — (6) No. 946. — (7) This reference is missing in the original text.

[*Latin ed. p. 536*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY.

524. It is to be noted that a husband is not obligated to grant his wife access to him, even if she desires it, if she is furious (1).

2. It is to be noted that if a man has relations with a woman who is a relative of his spouse in the first or second degree, he is obligated to grant her access, but he loses his own right to demand it, according to chapter "Si quis de eo qui cognosc." and so forth (2). However, in order for someone to lose this right to demand access, it is required that he know the law, not only divine law, but also ecclesiastical law, which prohibits incest: and it is probable that he should also know the penalty for such an offense, as Bonaventure, Wigand, Castropal, Bossuet, Elbing, the Council of Sancha, Layman, and others teach (3).

3. It is to be noted that if a spouse fears only a slight harm to their health from granting access, they are obligated to do so; and this is certain among all. However, if they fear a serious harm, they are not obligated, nor can they, unless themselves or the one requesting access are in imminent danger of incontinence; or unless there is a great fear of discord, provided that the illness they fear is not close to death; so teach Pontius, Sancha, Layman, and others (4). I said "can," but not "are obligated," because charity excuses granting access in that case, but does not obligate (5). Only the danger to the offspring, namely that it will be born with defects, does not excuse from the obligation to grant access, as the most Reverend Thomas teaches (6), along with others, because (as he says) it is better for the offspring to exist, even with defects, than not to exist at all (7).

4. It is to be noted that a spouse is not obligated to grant access if they are suffering from a fever; so teach Bonaventure, Sancha, Pereira, Busenbaum, and others (8). Indeed, a wife is not obligated to grant access if she knows that she cannot do so without endangering her life, as is commonly taught

(9). But can she grant access if she knows that her children will die? Layman affirms this; but it is more commonly taught by Bonaventure, Bossuet, Rodriguez, Victor, and others, unless there is a danger of incontinence, as Bonaventure and Sanchez add: (Sanchez says) that danger is greatest if the spouses should perpetually abstain from the use of marriage for this reason (10).

50. It is to be noted that a spouse sins mortally if they prevent the generation of a child when the other spouse is willing, or if they withdraw after their own seed has been sown, before the other spouse sows, because this prevents generation. It is permissible to interrupt the act of copulation only if there is a danger of scandal to others, or a danger of death (11); see the statements in number 40. Likewise, a wife sins if she immediately rises after copulation, or urinates, with the intention of preventing generation, unless she does so to avoid scandal, or to avoid death. I said "immediately," because she is not obligated to remain motionless for a long time; so teach Sancha, Pontius, Salm, Bonaventure, Bossuet, and others, contrary to Tamburrini (12). A girl who has been seduced outside of marriage cannot, without sin, expel the seed of a man after she has received it into her womb; she can only prevent it from being introduced, as the most Reverend Pontius, Tamburrini, Escobar, and Leander teach (contrary to Sanchez and Bossuet); because it is never permissible to eject the seed that has been received into the womb without harming the generation of a human being (13). But is it permissible for a man to copulate if, due to old age, or another infirmity, he often spills his seed outside of the vagina? It is permissible, as commonly taught by Sanchez, Layman, Bonaventure, Bossuet, LaCroix, and others, as long as there is a probable hope of spilling the seed inside, because then he still possesses the right to copulate (14).

51. It is to be noted that spouses are obligated, by reason of the duty to grant access, to cohabitate, not only with regard to the house, but also with regard to the marital act, unless they are separated by mutual consent, and in that case, there is no danger of incontinence, and no harm to the education of the children. However, a man can licitly undertake some brief period of absence (1).

(1) Lib. 6, n. 948.

(2) N. 949 and 1070.

(3) N. 1074.

(4) N. 950.

(5) In 4 d. 52, q. un., a. 1, ad 4.

(6) Lib. 6, n. 951.

(7) N. 952.

(8) N. 953.

(9) Ibid.

(10) N. 918 and 924.
(11) Ibid. See "Dicant."
(12) Ibid. Doubt 1.
(13) Ibid. Doubt 2.
(14) Ibid.

[*Latin ed. p. 537*]

OF IMPEDIMENTS. 525. A woman may resume conjugal relations with her husband, even if he is unwilling, for the sake of devotion, or for some other legitimate reason; but the husband may not be unwilling to have relations with his wife. Indeed, a husband may even be absent for a long time if it is necessary for the public good, or for the family; thus, commonly, Sanchez, Castro, Bossuet, and Layman, etc. Bossuet, however, with Tolet and Sayre, states that a husband is obligated to have relations with his wife if he can do so conveniently (1). When a wife is obligated to follow her husband, and the husband to have relations with her, see the aforementioned passage on the seventh precept, above, paragraph 7, number 13. Note that, if the dowry has not been paid, the husband cannot deny his wife her marital rights, nor can he demand cohabitation; but he is not obligated to support his wife if the dowry is not paid due to the fault of the one who promised it (and the same applies if the wife refuses to cohabit) unless a promise of the dowry has been made, or unless the wife has no other means of support, and the dowry is not paid through no fault of her own, or unless she refuses to cohabit without her own fault (2). If, however, a husband discovers that his wife has been unfaithful, he may justly deny her support, provided he can do so without exposing her to shame, for example, if the crime is already notorious; thus, commonly, Sanchez, Soto, Salm, Trull, etc. The same is said by Salm and others, if the wife has admitted kisses from another, whether openly or secretly, if she has been too lascivious, or if she herself is of noble birth (3).

POINT IV. OF IMPEDIMENTS. 52. What are impediments? — 53. I. Prohibition, II. Time of feasts. Whether the consummation of marriage is prohibited during the time of feasts. Concerning the blessing of the priest. III. Catechism, IV. Crime; V. Betrothal. — 54. VI. Vow. Whether a bishop can dispense from a vow of chastity. — 55. Concerning clandestine marriages and proclamations. — 56. Concerning the obligation to announce impediments, and when the announcement is effective. — 57. Whether a mere rumor is sufficient. If the betrothed are questioned, etc. If the parish priest knows of an impediment. — 58. When can a bishop dispense from proclamations, and should he do so? — 59. Can a vicar or parish priest dispense or declare? 52. There are two kinds of impediments to marriage: one is prohibitive, namely, those which render the marriage illicit, or which prevent its consummation. The other is dispensive, which render the mar-

riage altogether null; and it is certain, indeed, a matter of faith, that both kinds of impediments can be established by the Church, as declared by the Council of Trent, Session 24, Canon 4. For although the Church cannot render sacraments invalid when the necessary requirements are present, nevertheless, since the sacrament of marriage exists in the contract, it is fitting that the Church, with just cause, can invalidate the contract, and, when the contract is absent, neither can the sacrament be present (4). In the following point, we will speak of dispensive impediments, in this one, we will speak only of prohibitive impediments. Besides sin and excommunication, which render marriage illicit, there are six other impediments which are included in these verses. 53. — 1. The prohibition of the Church, 2. Also, the time of feasts, 3. And the Catechism, 4. Crime, 5. Betrothal, 6. Vow. These impede the marriage from being entered into, but allow it to be valid if already contracted. I. Prohibition, namely, the prohibition of the bishop or parish priest, due to a doubt as to whether an impediment exists, or due to the inability to contract marriage (5). II. Time of feasts. The feasts are from the Advent to the Epiphany, and from the day of Ash Wednesday to the octave of Easter. But it should be noted that during these times, it is forbidden to bless marriages, to hold more solemn festivities, but not to contract marriage, nor to bring the bride into the house, if this is done (1) Book 6, number 959. — (2) Number 959, Doubts 1 and 2. — (3) Ibid, Doubt 3. — (4) Number 979. — (5) Number 982.

[*Latin ed. p. 538*]

526. TRACTATE XVII. ON THE SACRAMENT OF MATRIMONY. It is not required that the marriage be celebrated with solemnity; nor is it forbidden to consummate the marriage, as rightly say Bellarmine, Sanchez, and Pontedera, and Lambertini confirms this extensively (1), who afterwards, as Benedict XIV (1), with Pignatelli, Filliu, Croix, etc., declared that the canons cited by canonists are of counsel, not of precept (2). And although some say that sin is committed (but only venially, as commonly say Sanchez, Bossuet, Soto, Salmeron, Escobar, etc. (3), contrary to Concina, who contends that it is mortal), in entirely omitting the blessing given by the parish priest, or by a priest with his permission, in a Mass specially designated for this purpose for the first marriage, for the second marriages are not blessed, as commanded by Benedict XIV in the bull *Etsi Pastoralis*, § 8, no. 4, issued in the year 1742; nevertheless, Navarrette, Pontedera, Laym, Sanchez, Bellarmine, Castrop, Salmeron, Viva, etc., with Lambertini in the aforementioned place, commonly say that marriage is licit before the blessing, and this is proven from the Council of Trent, session 24, chapter 1, and from the ritual, where this is not only implied, but also commanded; and more clearly from canon 30, question 5, of the Council of Navarre, where it is said: "And thus they receive the blessing, and the 'celestial veil'; but it is a sin if these things do not occur in the marriage covenant, which we do

not say" (4). III. CATECHISM. Regarding what is meant by "catechism," some say it is the profession of faith which is made in the name of baptism, while others explain it differently. However, this impediment ceased with the Council of Trent, as say Sanchez, Concina, Castrillon, Salmeron, etc., with a declaration of the Holy See (5). IV. CRIME; Formerly, under this name, certain crimes were included, namely, incest with one's own mother, abduction of another's betrothed, etc.; but this impediment has also lapsed through prescription (6). V. SPONSALIA, namely, betrothals entered into with another person, but not dissolved, of which mention has already been made in the preceding section. 54. — VI. VOW, namely, a simple vow of chastity, or of religious life, or of not marrying. It should be noted that the bishop cannot dispense in a vow of chastity before the marriage is contracted (since the vow is absolute; unless it is penal, or conditional, as said above in treatise V, no. 495); except, if he did not dispense, there would be danger of incontinence, or of some other grave harm due to the delay, and he could not more quickly obtain dispensation from the Pope, as commonly say Sanchez, Suarez, Lessius, Navarrette, Soto, Silvestrine, Salmeron, etc. (7); for dispensations are instituted for the edification, not for the destruction. However, in the case of first marriages, the bishop can dispense in a vow of chastity made after the marriage, or even before it, as commonly and more probably say Soto, Sanchez, St. Antoninus, Concina, Navarrette, etc., from St. Thomas (8). And they also enjoy this power, the mendicants, as commonly say Castrop, Wigand, Sanchez, Suarez, Tournhem, Salmeron, etc., by virtue of their privileges (9). However, a vow of chastity made by spouses by mutual consent can only be dispensed by the Pope, as say, with the more common opinion, Sanchez, Sporer, Anacleto, Ferraris (10). Furthermore, except for a vow of chastity, and betrothals entered into with another person, the bishop can dispense in all impediments that impede, and in all others that arise after the marriage; Castrillon, Bonaventure, Salmeron, Croix, etc. (11). (1) *Notitia* 8g, no. 17. — (2) *Lib.* 6, no. 984. — (3) No. 988, *secundum*. — (4) No. 984, *dubit.* s. — (5) No. 983. — (6) *Ibid.*, *vide* Dicitur IV. — (7) No. 987, *dubit.* s. — (8) *Ibid.*, *dubit.* s. — (9) *Ibid.*, *vide* An putet. — (10) Ferraris, *Bibl.*, *vide* *Debitum conjug.*, art. s., no. 4. — (11) *Lib.* 6, no. 987, *dubit.* s.

[*Latin ed. p. 539*]

OF OBSTACLES. 527 55. — Besides those already mentioned, there is the obstacle of clandestine marriage, namely, when a marriage is performed without the three public announcements prescribed by the Council of Trent, Session 24, Canon 1, concerning the reform of marriage. To ensure that these announcements are made properly, it is necessary that 1. they be made by the proper parish priest, or by another priest with his permission; 2. they be made in the church, with the people assembled for divine worship, as prescribed by the Council of Trent; although it is likely that

Sanchez Barbosa and Roncaglia can say that they can also be made during a procession or gathering; indeed, Wigandt, Sanchez Laymann, Barbos, Bos, Escobar, Fill., etc. (against Pontius and others) admit that they can be made outside the church in a place of great gathering, because in this way the purpose of the announcements is already achieved (1). 3. They must be made in the place of origin, as repeatedly declared by the Sacred Congregation (2). Therefore, if the parties are from different parishes, the announcements must be made in both churches; unless, as Laymann, Boss, Salm., etc., say, the parishes are very close to each other. And in the case where one of the parties is only staying in a place temporarily, it is not enough that the announcements are made there, but they must also be made in the place from which he came, as is very likely (against Pontius, Sanchez, Coninch, Barbos, Roncaglia, and in accordance with the declaration of the Sacred Congregation). Furthermore, it should be noted that, if one of the parties is a foreigner, the parish priest must not proceed with the announcements unless he first has authentic proof before the ordinary of the party's freedom from impediment, as stated in the instruction of the Sacred Congregation (3). 4. The three aforementioned announcements must be made on three consecutive festive days, as stated by the Council of Trent, Session 24, Canon 1, and not on immediate days, as Sanchez, Roncaglia, Pontius, etc., say; although it is also likely that Trull, Salm., Hurtad, Regin., etc., hold that immediate days do not present an obstacle, as long as the Council does not prescribe anything other than three festive days, and does not add that they must not be immediate. Salm., with Aver., and others, also allow the announcements to be made on three non-consecutive festive days, provided that no more festive days intervene; but this is rightly excused by Sanchez, Castrop, Bonac, Escobar, etc., at least from venial sin (4). It should be noted that if, after the announcements have been made, the marriage is not celebrated within two months, the Ritual (title on Sacred Marriages) states that the announcements must be made again, unless it seems otherwise to the bishop. 56. — Therefore, once the announcements have been completed, it is asked whether anyone who is aware of an impediment is obliged to report it, even if he cannot prove it? Pontius and Diana, etc., deny this. But the more correct and common opinion affirms, with Sanchez, Cast, Coninch, Escobar, Laymann, Bon, Barb, etc., that he is obliged to report it, as is proven from Chapter 12 on betrothal, and from Canon 22 on witnesses, where it is said: "If a mother testifies that they are" relatives, they should not be joined in marriage." And so, the fame of an impediment is sufficient to prevent the marriage, even if it is under a natural secret, even with an oath, as Sanchez, Escobar, Boss, Barbos, Salm., etc., say, with St. Thomas (5), who teaches that an oath of secrecy does not obligate where there is a question of preventing a common or third-party harm (6). However, it must be understood that whenever the reporting can be

done conveniently, the witness is not obliged to report it if it would cause him serious harm, or a serious scandal to others (7). It is also understood that, after giving notice, the person is obliged to warn the parties before reporting the impediment to the bishop or parish priest (if the warning is likely to be helpful) so that they refrain from such a marriage (8). To this end, (1) Book 6, no. 991. — (2) As reported by Zaccharias in his Annotations to Croix, Book 6, page 3, no. 477. — (3) Book 6, no. 991, Doubt 3. — (4) No. 994. — (5) 2-2, q. 70, n. 1, 66 i. — (6) Book 6, no. 99s. — (7) Ibid., at the end. — (8) No. 994, see Cerfun.

[*Latin ed. p. 540*]

528 TRACT. XVIII. ON THE SACRAMENT OF MATRIMONY. The marriage is impeded by the denunciation of a witness, it is required that 1. he not only denounce, but also declare the impediment, even if he otherwise offers himself to remove it, as Sanch., Boss., Gutt., etc., say, provided that he has not proven the fame of the impediment, because then it suffices that he denounce, as is stated in chapter "Not in two," concerning betrothals. 2. It is required that he declare, or denounce, under oath. 3. From certain knowledge, and not merely by hearsay, except if the impediment is of consanguinity or affinity, because then it suffices if he knows it from certain and trustworthy persons. 4. It is required that the witness not be of a vile condition, unless the fact is so hidden that it cannot be proven otherwise; for where the power of proving is lacking, even a proof that would not be sufficient in itself is admitted: thus, generally, the Doctors (1). 57.— Furthermore, much must be noted concerning this matter. It must be noted 1. that the fame of an impediment suffices to impede marriages, as stated above; but this does not apply to the consanguineous of the betrothed, as Sanch., Castr., Gutt., etc., say, from chapter "Cum in tua," concerning betrothals, or if the betrothed themselves swore that the impediment was not present (2). It must be noted 2. that those entering into marriage are bound, when legitimately questioned, to either confess the impediment or abstain from marriage, even if the impediment is not proven; unless, however, they have secretly obtained a dispensation, in which case they are not bound to reveal the impediment, since it is not proven from elsewhere; thus, Silv., Sanch., Roncag., Boss., and others, generally (3). It must be noted 3. that a parish priest, bishop, or other judge, if he himself only had knowledge of the impediment, provided that he does not know it under the seal of confession, is bound to impede the marriage. It does not prevent one from saying that the sacrament cannot be denied to a hidden sinner, if he publicly requests it; for this applies only when no other evil occurs than the sacrilegious reception of the sacrament; otherwise, when other serious harms intervene, which usually occur from invalid marriages: thus, Sanchez, Castrop., Boss., Conin., Ronc., Escob., etc., teach correctly, against Ponthieu (4). And here it must be noted that the parish priest is

bound by a grave duty to diligently investigate whether any impediment exists before celebrating a marriage (5). 58.—It must be noted 4. that the bishop, according to Trident, session 24, canon 1, can dispense in such a way as to allow only one proclamation, or even none at all, when a just cause intervenes, as when there is a probable suspicion that the marriage is maliciously being impeded, as is stated in the text of the Council, and also for other reasons, as Sanch., Barbos., Pont., Cabass., Bon., Boss., Salm., etc., say, namely, if the marriages were to be celebrated between important people, or between the elderly, or between people of very different conditions, age, wealth, or other qualities; or if it is morally certain that there is no impediment: otherwise, if the bishop dispenses, he must always, at least, make himself certain that the impediment does not exist elsewhere (6). If a dispensation is necessary to avoid a serious spiritual or temporal harm, or to remove some impediment to a notable good, even a private one, then (as Ronc., Sanch., Barb., Castrop., Bonac., Filliucin., Boss., Conin., etc., say), the bishop is bound to dispense, if 1. there was a probable fear that the marriage would be unjust.

(1) Lib. 6. num. 997.

(2) Num. 999.

(3) N. 1000.

(4) N. 1002.

(5) N. 64. v. Certum.

(6) N. 1006.

[*Latin ed. p. 541*]

OF DIRIMENT IMPEDIMENTS. 529. Impediments may arise that prevent a marriage. 2. If the marriage were necessary to avoid infamy for the betrothed or for the offspring, for example, if the woman had previously been defiled, and the betrothed were about to die or depart to a distant region, or if there were fear that he might change his mind. 3. If the parents were forcing the son to marry an unworthy person. 4. If there were fear of some spiritual or temporal danger. 5. If the time of the Nativity or Lent were approaching, as Roncatius adds, and likewise for any other reasonable cause, according to prudent judgment (1). However, Bossuet (2) states that if, despite these circumstances, the bishop unjustly denied a dispensation, the parties should appeal to a higher judge; however, they cannot contract marriage unless there is a danger in delaying, and they lack the means to appeal to a higher authority. It should be noted here what the Council prescribes: "Before consummation, announcements must be made in the church," unless the ordinary judges that they may be omitted. Furthermore, it should be noted what Benedict XIV ordered to be observed in the bull *Nimia licentia* (issued on May 18, 1743), where he forbade bishops from granting permission to any priest other than the parish priest

to assist at marriages, nor from granting dispensations, unless there is an urgent, legitimate, very serious, and unavoidable reason, clearly understanding from the Council of Trent that he does not have the unrestrained and immoderate power to grant dispensations. And he should not grant permission to contract marriage before another priest than the parish priest, unless he has diligently ascertained that there is no impediment. 59. Here, the question arises: can a vicar general, and even a parish priest, grant dispensations? Regarding the vicar general, it is more probable that he can, since he forms a tribunal together with the bishop; this is commonly held by Sanchez, Castrop, Bonacini, Wigand, Elbel, Barbatus, Roncatius, and Fillon, against Pontius and Dianus (3). On the contrary, a parish priest cannot, because he has no jurisdiction. Therefore, if he presumes to assist at a marriage without announcements, he incurs suspension from office for three years, but this is a debatable opinion, as stated in chapter *Cum inhibitio*, § *Sane*, concerning clandestine dispensations. However, Sanchez, Layman, Croix, Roncatius, Gobius, and Elbel state that in cases in which the bishop is obligated to grant a dispensation, and he cannot be reached, and delay would cause danger, in that case the parish priest cannot grant a dispensation, but he can (provided he is certain that there is no impediment) declare that the precept of announcements is not binding. Indeed, Pontius, Castratus, Bossuet, Salmerius, Busembach, Sanchez, Concinius, Sotellus, Escobar, and others add that the betrothed themselves, if they are certain that there is no impediment, can contract marriage (4), omitting the announcements.

POINT V. OF DIRIMENT IMPEDIMENTS. 60. The diriment impediments are announced. 61. I. Of the impediment of error concerning the person, and concerning the quality. 62. II. Of the impediment of condition. III. Of the impediment of vow. IV. Of the impediment of consanguinity. 63. V. Of the impediment of crime. 64. VI. Of the impediment of disparity of cult. 65. VII. Of the impediment of violence and fear. 66. VIII. Of the impediment of order. 67. IX. Of the impediment of marriage. 68. X. Of the impediment of public honesty. 69. XI. Of the impediment of age. 70. XII. Of the impediment of affinity. 71. Of the impediment to petitioning. 72. Who can grant a dispensation in this impediment. 73 and 74. XIII. Of clandestine marriage, and of the assistance of witnesses. Of the parish priest's assistance. 75. Of the impediments of vagi and externi. (1) Book 6, no. 1005, see *Doctrina*. (2) Bossuet, vol. 1, chap. 7, no. 54, on marriage. (3) Book 6, no. 1007. (4) Ibid., *Dubia*, a. 34.

[*Latin ed. p. 542*]

530 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. 73. What assistance is required from the parish priest? — 74 and 75. Concerning impotence. — 76. XV. Concerning abduction. 60. IMPEDIMENTS that dissolve marriage (besides lack of consent) are the following: 1. Error, 2.

Condition, 3. Vow, 4. Consanguinity, 5. Crime, 6. Disparity of cult, 7. Force, 8. Order, 9. Bond, 10. Dishonor, 11. Age, 12. Affinity, 13. If clandestine, 14 and 15. If the woman is abducted and not delivered to her husband. These factors prevent marriage and, when present, dissolve marriage that has been contracted. 61. Let us discuss each of these individually. I. Error. An error concerning the person, according to the law of nature, invalidates marriage, even if it is vincible, and even if it is accompanied by another error, provided that the one who did not cause the contract to be made is not the one who committed the error, so that even with a known error, the marriage would still be valid (1). An error concerning the quality of the person, e.g., if she is judged to be a noblewoman, a virgin, or wealthy, and she is not found to be so, certainly does not invalidate marriage; and this is according to the common opinion, and the more correct opinion of Sanchez, Molinos, Layman, Navarre, Concilium Habitationis, Roncone, Lessius, Gonfalonieri, Salmanticensis, etc., with St. Thomas (2), against Pontius and a few others, even if the error gave a reason for the contract; for already there has intervened consent concerning the substance of marriage, which consists in the verification of the person; otherwise, if all the qualities apprehended by the contracting parties were to be verified, countless marriages would remain doubtful and subject to litigation (3). However, if the quality were to extend to the substance, the doctors commonly say that then an error concerning the quality invalidates marriage. There are three rules by which it can be determined when an error concerning the quality extends to the substance. The first is when someone actually intends, or has never changed their will, to not contract, except under the condition of that quality; thus, Sanchez, Pontius, Castropalus, Salmanticensis, and others commonly (4). The second is when the quality is proper and individual to a certain person, e.g., if someone intends to contract with the eldest daughter of the King of France; thus, Castropalus, Petreius, Habertus, Layman, Holzmüller, and Sporer (5). On the other hand, if he intends to contract with one of the daughters of the king, because then the quality is not individual, but common to other daughters, and even less so if he intended to contract with the daughter of the king; unless it is the case that he primarily intended not to contract except with a person of royal lineage (6), as we will say shortly in the third rule. The third is when the contracting party primarily intends the quality, and less primarily the person, e.g., if he were to say: "I want to marry a noblewoman, such as I believe N. N. to be." On the other hand, it would be different if he were to say: "I want to marry N. N., whom I believe to be a noblewoman," thus Sotus, Silvestrius, Abulensis, Holzmüller, Cabassus, and others with St. Thomas (7). 62. II. Condition. By condition is meant a servile condition; therefore, if marriage is contracted with a slave out of ignorance, the marriage is null (8), and this even if the ignorance was crass, as Sanchez, Coninius, Salmanticensis, etc., more probably say, against Sotus (9). On the other hand, if he already knew

that she was a slave, then he would validly contract, but the marriage would be irregular according to canon law, if he were a free man (10). Likewise, it would be a valid marriage if he himself were a slave, as more probably held with St. Thomas (11), Sanchez, Salmanticensis, Bonaventure (12). The same applies, as more probably say Sanchez, Salmanticensis, Bonaventure, etc., against Castropalus (13), if the slave were to become free through marriage.

(a) Suppl. q. 51. art. 2. in corp. ad. r. et ad 3.
(3) L. 6. n. 1612 et 1012.
(4) N. 1013 et 1012.
(5) N. 1015.
(6) N. 1016.
(7) N. 1017.
(8) N. 1012.
(9) N. 1018.
(10) Suppl. q. 52. 2. 1. ad r.
(11) Lib. 6. n. 1018. v. Si vero.
(12) N. 1089.

[*Latin ed. p. 543*]

OF IMPEDIMENTS THAT PRECLUDE MARRIAGE. 531. A dispensation may be granted in cases where a woman is given in marriage by her lord, or when another man marries her without knowing that she is a serf. III. VOW: This refers to a solemn vow of chastity, either made upon entering a religious order or through a voluntary religious profession. It is called "voluntary" because a vow made out of fear is considered null (1). It is highly probable that the Pope can dispense from a vow made in religious profession, as held by St. Thomas (2), St. Antoninus, Suarez, Lessius, Sanchez, and Cajetan (3). The same is said regarding a vow made for the sake of Holy Orders (4). IV. AFFINITY. Affinity is threefold: legal, arising from a perfect adoption, namely, by a decree of the highest prince; and this precludes marriage between the adopter and the adopted, between the spouse and the adopted's descendants, and between the spouse of the adopter and the adopter's relatives in the first degree; as stated in chapter "On Adoption," question 3, and in canon "Diligere," question 3, number 30 (5). Spiritual affinity arises from baptism or confirmation; and this precludes marriage between the baptizer and the baptized, between the godfather and the baptized, and between the parents of the baptized, as stated in chapter 1, "On Spiritual Affinity," number 6, and in the Council of Trent, Session 24, chapter 2 (6). See the statements in treatise 14, numbers 33 and 53. Finally, there is carnal affinity, which arises from consanguinity between persons descended from the same ancestor: and this, in the collateral line, precludes marriage by ecclesiastical law up to the fourth degree;

but in the direct line, always (7). Whether this prohibition in the direct line is by natural law or by the law of the Church is a question; however, it is probable that marriage is prohibited by natural law only in the first degree, so that in the other degrees the Pope can grant a dispensation; as held by Lessius, Lugo, Sanchez, Salm, and Roncaglia (8). See the statements above in treatise 9, number 18. The following rules are given to distinguish the degrees of consanguinity: I. In the direct line, the number of degrees is equal to the number of persons, excluding the ancestor, who is never counted in the number. II. In the collateral line, the number of degrees is equal to the distance of either spouse from the common ancestor. III. In the collateral line, the number of degrees is equal to the distance of the more distant relative from the ancestor (9). Whether the closer degree should be mentioned in a dispensation is a matter to be considered (10). 63.—V. CRIME. Crimes that preclude marriage are homicide, adultery, and rape. Regarding rape, more will be said in number 76. Therefore, speaking here of homicide and adultery, this impediment arises in three cases: 1. When both parties are involved. 2. When only one party is involved. 3. When neither party is involved. And I. When both parties are involved, it is understood that both betrothed have conspired (but without adultery) to cause the death of the spouse to whom one of them was betrothed, with the intention of entering into marriage with that person (11); at least, when one of the betrothed had such an intention and communicated it to the other, as is more likely held by Pontius, Vasquez, Peyre, Diana, and Salm (12), against Sanchez and Castrop, who assert that the impediment arises even if the aforementioned intention was not communicated to the other party. However, I believe that it is sufficient, or at least required, that there be sufficient evidence to show this, for example, gifts, love letters, or other signs of affection and familiarity that existed between the parties (13). II. When only one party is involved, it means that only one party intended to cause the death of the other (x) Lib. 6. n. 1024. — (2) In 4. d. 38. q. 1. art. 4. ad r. — (5) Lib. 3. n. 256. — (4) Ibid. et lib. 6. n. 807, 809 et 1059. — (5) Num. 1027. — (6) N. 1028. — (7) N. 1029. — (8) N. 1026. v. Prima. — (9) N. 1033. v. Ex I capite. — (10) N. 1034.

[*Latin ed. p. 544*]

TRACTATE XVII. ON THE SACRAMENT OF MATRIMONY. Having unknowingly given his wife to death, he committed adultery with the woman he intends to marry, as stated in canon 31 of Quoniam. However, for this impediment to arise, it is required that: 1. the adultery precede the homicide; 2. the adultery be perfectly consummated, with the mingling of seed from both the man and the woman, according to the opinion of St. Bonaventure, Innocent, Hostiensis, and others who call it a "probable" opinion (Sanchez, Castrop, Roncaglia, Salm, etc.); the reason being that this impediment has the nature of a penalty, and any penalty is not

incurred unless the crime is perfectly consummated in its own kind; and for adultery to be perfectly consummated, it is necessary that the two become one flesh through the mingling of the seed of both; as St. Thomas states (whose words we will quote later, number 68, at the end), "only through the mingling of seed do a man and a woman become one flesh" (1). It is also required that 3. both parties be aware of the prior marriage; therefore, it is probable (as Sanchez, Rebel, Aversa, Busembach, and Salm say) that ignorance, even if culpable, excuses, if it was not intentional (2). It is also required that 4. the killing be done with the intention of being able to marry the adulteress, and that such intention be made manifest to her (at least by the means described above); as Sanchez, Pontius, Vasquez, Salmantic, and Perez state (3). III. In the case of neither party committing homicide, it is understood that only adultery occurred, along with a promise of marriage, as stated at the end of the chapter "De eo qui duxit" (Concerning the one who has been married). To incur this impediment, it is required that: 1. the adultery and the promise of marriage occurred while the spouse was still living; 2. the promise was not revoked before the adultery; 3. the promise was accepted. These points are certain among all (4). There are other points that are doubtful, so we say: 1. it is probable, with Sanchez, Castrop, and Guttieri (against Pontius, etc.), that the mere silence of the adulteress is not sufficient for acceptance (5). We say 2. it is more probable and commonly held, with Layman, Bonaventure, Salm, Holzmüller, Croix, Sporer, etc. (against Sanchez, Castrop, etc.), that a feigned promise is not sufficient, since the cited text requires a promise, which a feigned promise is not (6). We say 3. a conditional promise is not sufficient; since we are dealing with a penalty, for the promise mentioned in the text, it must be understood as absolute, and some even say it is more probable (Layman, Conin, Perez, Holzmüller, against Sanchez, Tournhem, etc.) (7). We say 4. against what is more probable and commonly held, with Sanchez, Bonacin, Castrop, Sotelo, Coninck, Silva, etc., against Bellarmine, Layman, Holzmüller, and Elbel, that a mutual promise is not required; for in chapters 1 and 6 of "De eo qui duxit," no mention is made of a reciprocal promise, but only of a promise given (8). Furthermore, it should be noted that, in addition to these three crimes, a fourth must be added, from which also arises the impediment, namely, adultery with an attempted marriage, that is, when a man, while still married, knows another woman and intends to contract marriage with her; this marriage is null; whether the intercourse precedes or follows the attempted marriage, as stated in chapters 2, 4, 5, and 9 of "De eo qui duxit" (9). However, if a man, while still married, were to give his word to marry another, but without adultery and without an attempted marriage, he would not incur this impediment, but would not be excused from a grave sin, as commonly stated by Sanchez, Layman, Bonacin, Castrop, Elbel, etc., and as is deduced from the end of the chapter "De eo qui duxit" (9).

(1) Book 6, number 1056, volume I, line "Iline autem."
(2) Ibid., line "Requir. V."
(3) Ibid., line "Requir. VI."
(4) Number 1057.
(5) Number 1038.
(6) Number 1039.
(7) Number 1041.
(8) Number 1042.
(9) Number 1043.

[*Latin ed. p. 545*]

OF IMPEDIMENTS THAT BIND. 533 64. — VI. Disparity of cultus: this means a difference in religion. This impedes marriage between a baptized person and an unbaptized person; but between baptized persons, namely between a Catholic and a heretic, disparity does not impede, but only renders the marriage unlawful, unless the Pope grants a dispensation, as explained in chapter 1 on Divorce, and in the bull of Benedict XIV, *Matrimonia*, dated November 4, 1741 (1). VII. Force, meaning not only force properly so-called, but also fear, which impedes marriage both according to ecclesiastical law, as in *c. Significavit*, chapter Veniens, and *c. De eo qui duxit*, etc., and according to natural law (2). And it impedes, even if it is confirmed by an oath, provided that the oath was not given to provide free consent; because then it certainly obligates, as says P. Viva (3). But for fear to invalidate marriage, 1. it must be grave, because a slight fear is not sufficient, as is held with the common opinion of Pontius, Castrop, Sancius, Tambur, Bossuet, and Vivès (4) (against Lugo and Navarret), with St. Thomas (5), who says: "Coercion by fear, which falls upon a constant man, annuls the marriage, and nothing else." The reason is that neither natural law nor positive law holds that a slight fear invalidates marriage (5). By grave fear is understood the danger of death, exile, imprisonment, infamy, or the loss of a great fortune, or excommunication, or another serious harm, which the contracting party fears for himself, or for those closely connected to him up to the fourth degree: thus, generally, the doctors (6). Only reverential fear towards parents, grandparents, lords, prelates, and guardians (Roncaglia, Sancius, Bossuet, etc., add also towards uncles and older brothers) is not considered sufficient to invalidate marriage, unless it is accompanied by a grave fear of a serious evil, such as prolonged hatred, or indignation, or beatings, etc.; for, as rightly says Pontius, a purely reverential fear is not properly fear, but a simple reverence which brings with it no fear of any evil, but only a certain shame, which arises more from within than from without, as will be explained shortly (7). 2. This fear must be externally imposed, that is, by another, and it is not sufficient if it is internally imposed, as if someone were to contract marriage in order to be

freed from a harm apprehended by himself, but not imposed by another; thus, generally, Sancius, Pontius, Sancius, Roncaglia, and Salm (8). 3. It must be unjustly imposed; therefore, if a man, after making a promise of marriage, contracts it out of fear of imprisonment, which a judge justly threatens him with, or out of fear that the woman will accuse him, then the marriage is valid. 4. The fear must be imposed with the intention of causing the marriage to be contracted; therefore, if a rapist leads a woman into marriage, having been threatened with violence by him, the marriage is null; on the other hand, if parents threaten him with death for violating their daughter, and he contracts marriage to escape the danger, then the marriage is valid; thus, generally, Sancius, Bonaventure, Roncaglia, and others (9). It is doubtful whether, if a marriage is invalidated by fear, the party who imposed the fear also remains free. It is probably affirmed by Sancius, Sancius, Castrop, Busembach, Hurtado, etc. But it seems more probable, as stated by Pontius, Navarret, Coninck, and Salm, as is deduced from chapter 1 on *De eo qui duxit*; because no one should profit from their own wrongdoing. Indeed, we say with Castrop that he who imposes fear (1) Lib. 6. n. 56 and 1044. — (2) N. 1045 and 1054. — (3) N. 1045. — (4) Suppl. q. 47. a. 3. — (5) Lib. 6. n. 1055. — (6) N. 1047 and 1048. — (7) N. 1056. — (8) N. 1049. — (9) Ibid. ad 1053, where other cases are discussed.

[*Latin ed. p. 546*]

534 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. has been struck, it must certainly be held that a woman is bound, since she cannot, by any other means, render honor to him (1). 65.—VIII. Order: It is understood as referring to the sacred order, by which marriage is impeded, not, as some believe, by divine law, but by ecclesiastical law, as is more likely taught by Sanch., Pont., Suar., Bellarmine, etc., along with St. Bonaventure and St. Thomas (2), who says: "But that (order) impedes marriage," from the constitution of the Church, has the following: "because the simple vow of chastity does not certainly invalidate marriage; if, therefore, it does invalidate it, it is because it is a solemn vow, but such solemnity comes only from the law of the Church; therefore, the Pope can rightly dispense in this matter (3)." IX. Bond: It is understood as referring to the one who is bound by another marriage, for which reason he cannot contract marriage with anyone else, unless it is certainly known that the former spouse is dead; if he is present, he who has contracted another marriage is bound to return to his former vows (4). X. Honor: Indeed, public honor, by which no marriage is permitted to one who, after having celebrated betrothals with one woman, contracts marriage with a relative of that woman in the first degree, as was most recently established by the Council of Trent, because, according to ancient law, this impediment extended up to the fourth degree (5). It should be noted that 1. such an impediment does not arise from betrothals entered into with an uncertain person (e.g., with

one of the daughters of Peter), as is clear from chapter one on betrothals in 6. nor from betrothals that are conditional, if the condition has not yet occurred, as commonly stated by Sanch., Castrop., Bonac., Salmantic.; and it is certain from the declaration of Boniface VIII apud Tournely. It should be noted that 2. an impediment to public honor arises up to the fourth degree from a valid marriage, even if the marriage is null, provided that the nullity does not arise from a lack of consent, because the ancient law has not been corrected by the Council in this regard; thus, commonly, Sanchez, Pont., Castrop., Salmantic. But the question arises, whether an impediment exists, when the nullity arises from a lack of consent? Sanchez, Pont., and others affirm, whenever the lack of consent is hidden (and they say the same about null betrothals due to any hidden defect, when they are valid in external appearance). But it is more likely that Castr., Bon., Tourn., Concin., Salmant., Coninc. deny, because in the cited text it is universally stated that from a marriage null due to a lack of consent, no impediment arises; and thus Barbosa declared that the Sacred Congregation held this view. Regarding betrothals, the Council of Trent, session 24, chapter 3, stated indistinctly, "where betrothals, for any reason, are not valid, the holy synod completely removes (the impediment)" (6). It should be noted that 3. betrothals, even if dissolved by mutual consent, or for another just cause, create an impediment, as correctly stated by Sanchez, Tourn., Concin., Sot., Laym., Bonac., Salmantic., etc. (contrary to Pont., Castr.). The reason is that, according to Trent, an impediment already arises from valid betrothals; therefore, this cannot subsequently be removed by the will of the betrothed, or by another intervening cause: and this opinion (as correctly stated by La-Croix) must certainly be held, based on the approval of the Sacred Congregation, approved by Alexander VII on July 6, 1668, where it was forbidden that this should be questioned again (7). It should be noted that 4. an impediment to public honor can also arise from a marriage that is null, because it was clandestine, as correctly stated by Pont., Castrop., Pign., Roncagl., Tourn., Conc., Laym., etc. (contrary to Sanchez, Nav., and Coninc.). And thus the Sacred Congregation declared (8). Furthermore, it should be noted here that (1) Lib. 6, n. 1057. — (2) In 4th dist., 37th question, 1st article, r. — (3) Lib. 6, n. 1058 and 1059. — (4) N. 1060. — (5) N. 1061. — (6) N. 1062. — (7) N. 1063. — (8) N. 1064.

[*Latin ed. p. 547*]

OF IMPEDIMENTS THAT PRECLUDE MARRIAGE. 635. It is certain that a man who has had carnal relations with his brother's wife, though the act was invalid due to public decency, does not create an impediment to the marriage of his brother with another woman, with whom he has entered into betrothal, as is stated in chapter 1 of the cited work, on betrothal, section 6 (1). 66. XI. Age: It is understood that if either of the betrothed is less than fourteen years of age, and the woman is twelve, the marriage is

null, as is stated in chapters 7, 10, and 14 on the marriage of the impuberal, unless malice compensates for the lack of age, as is excepted in chapter 9 of the same title; but this is understood with respect to those impuberal persons who have already reached puberty. Furthermore, it is understood with respect to those who are not only capable of generation, but are also capable of understanding the consequences of the marital bond, for which the perfect use of reason is necessary, as Sanchez, Sotus, and others say, with St. Thomas (2). The question is asked here, whether a marriage is null if the young people, even though they have reached the age of puberty, are unable to have intercourse? Some affirm this, but it is generally denied, as Navar, Castrop, Sanchez, Sylvester, etc., state; for there is no reason why a marriage between pubescent young people should be null, if they are still lacking the power to generate; rather, such impotence should be considered as temporary rather than permanent. Therefore, as Castr, Pont, Sanc, Silo, Escob, etc., state, the age of the male should be waited for until the age of eighteen, and the age of the female until at least fourteen (3). It should be noted here that the marriage of elderly people is also valid, provided they are able to have intercourse by medical means; thus, Sanchez, Salm, and others say, with St. Thomas (4). 67. XII. Affinity: Affinity is that which arises from the carnal union of one of the spouses with the blood relatives of the other. This precludes marriage up to the fourth degree of consanguinity, if the union was lawful; up to the second degree, if it was unlawful; thus, according to the Council of Trent, session 24, canon 4. It should be noted here that affinity does not create affinity, so that two brothers can marry two sisters; and a stepfather can marry the son of his wife, as the Holy See has declared (5). Furthermore, it should be noted that if a person has knowledge of his wife's sister, he cannot marry her without a dispensation; but if he obtains a dispensation, if he subsequently knows the same sister of his wife again, he does not need a new dispensation; and this is true even if the dispensation has been executed, as Sanchez, Tourn, Anacl, Guttier, etc., say, contrary to Habert and Elbel, with the declaration of the Holy See; because that affinity has already been removed by the dispensation, for the purpose of contracting marriage. And so, in truth, the Sacred Penitentiary responded on September 21, 1756, in a rescript which I have seen to be authentic. Lambert (6), with Fill. Cleric. and Tamb., observes that if, after a dispensation has been granted in conscience, the impediment for which the dispensation was granted is revealed in the external forum, and the spouses are unable to adduce any proof of the dispensation, then the bishop or parish priest must refrain, if the confessor testifies to the granting of the dispensation (7). 68. Furthermore, it should be noted that the aforementioned impediment of affinity precludes marriage when it preceded; but if, after marriage, a spouse has relations with the blood relative of the other in the first or second degree, he is deprived of the right to demand his due, as is stated in chapter 1 on him who has known, etc., and according to

the declaration of Gregory XIII (8). It should be noted that this impediment does not excuse fear, e.g., if a wife is forced by grave fear to have relations with the blood relative of her husband; thus, Navar, Bonac, Rebel, Elb., with Laym, Sot, Castr, and Salm, say, and they consider this probable (1).

[*Latin ed. p. 548*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. They are called impediments; for just as a grave fear excuses from a human law, so also ignorance excuses from punishment (1). 2. Ignorance excuses. This ignorance can be of the fact, of the law, or of the punishment. If it is of the fact, namely, if the spouse is ignorant that the person with whom he is joined in marriage is a blood relative of his spouse, he is excused by all, even if the ignorance was gross, as Sanch. Pont. Nav. Castr., etc., say, because that punishment is imposed only on those who sin knowingly (2). Nor is one excused who is ignorant of the ecclesiastical law, which prohibits something besides what is forbidden by divine law; for one cannot incur the punishment of a law of which he has no knowledge; thus, commonly, Suar. Navar. Bonac. Wigandt, Pont. Salm., etc., against a few (3). And it is also probable that one is not excused who, although he knows the ecclesiastical law, is ignorant of the punishment; thus, Bon. Wig. Castrop. Boss. Coninc. and others hold; because this impediment, as they say, has the nature of a true punishment; otherwise, one would also be excused who committed incest unintentionally, and since it is an extraordinary punishment, it is not applied to one who is ignorant of it, as will be said in tr. 19, n. 8, speaking of censures (4). 3. This impediment is not incurred unless the union has been consummated on both sides with the emission of seed, as is probably said by Castrop. Silv. Sanchez, Bonac. Salmant. and others, with St. Bonaventure and St. Thomas (5), who says: "A man and a woman become one flesh through the mixture of seed; therefore, unless the mixture of seed follows, affinity is not contracted." However, it should be noted that in case of doubt, it should always be presumed that the union has been perfect and consummated on both sides (6). 69. - Regarding this impediment, the common opinion is that bishops can grant a dispensation by virtue of their ordinary power, or at least by a custom already introduced (7), with Merbes. Castr. Laym. Pont. Sanch. Boss. Wig. Anacl., etc., against a few. And they can also delegate the power to dispense to others, since it is attached to the dignity of the episcopate; thus, also commonly, Barbosa, Pont. Sanch. Castrop. Salm. Bon., etc. (8). Also, all confessors of the mendicant orders can grant a dispensation in this matter by reason of their privileges, as Sanch. Ponc. Spor. Salmant., etc., say, against Concin. (9). However, for the confessors to be able to grant a dispensation in this matter, some hold that they must have the permission of their superiors general or provincial; others absolutely deny this; however, Salmant. and others rightly say that it is not required, but that the permission of the

local superior is sufficient, since the privilege granted to the Benedictine monks of Vallisolita by Martin V and by Julius II was granted to the prior of the monastery (10). 70. - XIII. If clandestine: It should be noted that the term "clandestine," when speaking of marriage, can be understood in two ways; first, when the marriage is performed without any announcements, and this has already been discussed in n. 55. Second, when the marriage is celebrated without the assistance of a parish priest and witnesses, and this is what is being discussed here. The Council of Trent, in session 24, chapter 1, declared that there is no marriage unless it is contracted before a parish priest, or another priest with his permission, and before at least two witnesses; and this applies (if in places where the Council of Trent is accepted) even if some necessity arises that would require the opposite, and even if the marriage was contracted out of ignorance; thus, commonly, the doctors hold (although some, with Scotus, say otherwise) (1), since the Council declared that those who contract marriage in another way are absolutely incapable (11). Regarding the witnesses, it should be noted that (1) Lib. 6. n. 1071. - (2) N. 1073. - (3) N. 1072. - (4) N. 1074. - (5) Suppl. q. 55. art. 4. ad 2. - (6) Lib. 6. n. 1075. - (7) N. 1076. - (8) N. 1125. - (9) N. 1127. - (10) N. 1128. - (11) N. 1079.

[*Latin ed. p. 549*]

OF IMPEDIMENTS THAT PRECLUDE VALIDITY. 537. Any witness is sufficient in this matter, even women, children (provided they are of sufficient understanding), heretics, infamous persons, parents, servants, and even those who are passing through that place or are detained by force; so generally hold Sanch., Barb., Castr., Laym., Bonac., etc. (1). 71.—Concerning the parish priest, however, more must be noted. To be noted: 1. By "parish priest" is not meant only the bishop and the vicariate general when the see is vacant, but also an abbot who has quasi-episcopal jurisdiction, a vicariate general of a bishop, even if the bishop has forbidden it, because he cannot prevent the parish priest, or his general vicariate, from assisting at marriages, as the Sacred Congregation has declared on several occasions (2). However, the parish priest would sin gravely if he assisted after the bishop had forbidden him to exercise jurisdiction, as the Doctors commonly say. To be noted 2. An irregular, suspended, or excommunicated parish priest can validly assist, as commonly held by Sanch., Pont., Salmant., etc., and Fagnano with the decree of the Sacred Congregation; for in this case, he does not exercise jurisdiction, but only acts as a witness (3). Although, if a person to be avoided is present, neither he nor the spouses would be excused from grave guilt; unless a very serious reason arises, requiring the marriage to be contracted more quickly; and unless there is no time to consult the bishop, as is more probably held by Conchinus, Pontius, Suar., Vasquez, Bonacina, etc., against Sanchez, Bossius, etc. (4). Conversely, it is more probably held by

Sanch., Castr., Barb., Pont., Bonac., Cajetan, Salm., etc. (against Laym. and others) that the parish priest to be avoided can rightly grant another priest permission to assist; for granting permission is not an act of jurisdiction, but an exercise of power granted to him by the Council, not as a parish priest, but as a witness, with the power to delegate another priest (5). It is also permissible for a parish priest who is not a priest within the year in which he is to be ordained, and even after the year (at least validly), as the Sacred Congregation has declared (6). And likewise, a priest who holds a parish by a titular right (7): or by common error, according to what is said in part 16, no. 90. To be noted 3. The permission of a parish priest is sufficient, even tacitly, provided it is presumed to be given with present consent; not merely by future ratification, as commonly held by Sanchez, Pont., Bon., Salm., etc. And it is also sufficient if given by deceit or fear, and only orally, as the same cited authors add (8). To be noted 4. The parish priest of the parish in which the spouses have their domicile should assist at the marriage; but if they have their domicile in two parishes, it is commonly taught by Sanchez, Pont., Bon., Conin., Ronc., Salm., etc., that they can contract before the parish priest of either, provided they both reside there (morally speaking) equally (9). But P. Zacharias notes that the Sacred Congregation has repeatedly declared that if the spouses falsely transfer their domicile to another parish, they would contract invalidly there. But the marriage would be valid if they truly transferred their domicile there, even if it were done to deceive the parish priest of their original domicile, as held by Croix with Fagnano, Barbosa, Sanchez, Silvest., Bossius, and others (10). To be noted 5. For the validity of the marriage, the assistance of either parish priest is sufficient, even outside the parish and diocese; therefore, the marriage is valid if the priest of the bride assists at the marriage of the groom, as the Sacred Congregation has repeatedly declared, with the approval of the Pope (11). But does the parish priest sin by assisting outside the parish? Some affirm it, but it is commonly held that he is excused by Sanch., Castr. (1) Lib. n. 1083. — (2) See P. Zach. spuæ Croix 1. 6. p. 3. n. 725. — (3) Lib. 6. no. 1082. — (4) N. 1083. — (5) N. 1004. — (6) N. 1081. — (7) Ibid. — (8) N. 1088. — (9) N. 1086. — (10) Croix, lib. 6. p. 3. n. 729. — (11) Lib. 6. n. 1087.

[*Latin ed. p. 550*]

538 TRACT: VIII. ON THE SACRAMENT OF MATRIMONY. Salm., Barb., Coninch., Boss., etc.; to assist at the marriage ceremony is not an act of jurisdiction (1). The question is asked: Can a person, intending to transfer their domicile to another parish, but not doing so through a formal change of residence, but rather intending to remain there for a significant portion of the year, validly contract marriage there? Some authors probably deny this; but it is more likely that Sanchez, Pontius, Bonaventure, Silvestri, Castro, and Salmant affirm this. Indeed, Lambertini, with Layman and

Navar, state that it suffices that the person remain there for a considerable portion of the year, due to some occupation, such as being a physician, judge, servant, merchant, etc. (2); see the aforementioned passage, 14, n. 17, 72. — Note 6: Vagrants can contract marriage before any parish priest, even if only one of the parties is a vagrant. However, the parish priest must then diligently investigate whether they have contracted marriage elsewhere; and he should not assist at the marriage without a special license from the bishop, as taught by Sanchez, Barb., Salm., etc. Regarding foreigners, they cannot be joined in marriage outside their own country, unless they present authentic proof from their own ordinary of their freedom of status (3). But, as the Sacred Congregation has also declared, foreigners detained in prisons cannot contract marriage there. And Lambertini teaches that the same applies to foreigners who are infirm in hospices, except in cases of pressing necessity, in which they can otherwise contract marriage, even without proof of their freedom of status; but they cannot consummate the marriage until it is established. Girls residing in institutions, however, must contract marriage before the parish priest of that very place, as declared by the Sacred Congregation. And Lambertini states, according to ancient custom, that this applies to girls who live in institutions, from which they receive sustenance and dowries; but those who are educated there must contract marriage before the parish priest of the domicile of their father, mother, or brother, if present, otherwise before the parish priest of the institution; and the same applies to servants who live in the homes of their masters (4). Furthermore, there are many decrees of the Sacred Congregation concerning the marriages of soldiers (5), namely, that they cannot contract marriage without the permission of the pontiff, before the chaplain of the camp, whether in a siege, or in winter or summer quarters, nor even in the camp itself; although I find a decree of the Sacred Congregation in Pittoni (6) where it is stated that the chaplains themselves can assist at the marriages of soldiers, when they are found on an actual expedition. But, since they are foreigners, they always need proof from their own ordinary of their freedom of status (7). 73. — Note 7: For a marriage to be valid, the presence of not only the material, but also the moral, presence of the parish priest and witnesses is required, so that they can testify both about the contracting parties and about the marriage itself; therefore, Pontius rightly says (against Sanchez), apud Croix (8), that if the parish priest did not clearly understand the consent of the parties, perhaps because one of them speaks a different language, it is not sufficient for one witness to affirm it. Rather, it is sufficient if the parish priest understands the consent of the parties, even if he does not see them (provided he understands their words), and even if he does not say anything himself, as decided by Fagnani, according to the Sacred Congregation, and as the doctors commonly say; indeed, even if they are detained against their will and object, as commonly also said by Sanchez,

Bonaventure, Filliuccius, Concinius, Busembach, etc. (9), and according to several decrees of the Sacred Congregation (10). But in this case, the parties would not be excused from mortal sin, and in some dioceses, this would incur [a penalty].

(1) Lib. 6, n. 1037.

(2) N. 115 and 1091.

(3) N. 1089 in line.

(4) N. 1091, v.

(5) Ap. F. Zach. ad Croix, l. 6, p. 3, n. 756.

(6) Pittoni, tr. de matr., n. 2217.

(7) See our work, l. 6, n. 1090.

(8) Lib. 6, p. 3, n. 756.

(9) N. 1092.

(10) Ap. Zac. ad Croix, l. 6, p. 3, n. 799.

[*Latin ed. p. 551*]

OF REMOVING IMPEDIMENTS. 539 would incur excommunication; unless there were a circumstance, as they say, Castr., Conc. Salm., etc., in which the parish priest unjustly refused to assist, and, on the contrary, there was a need to do so (1). Furthermore, the parish priest is bound to ascertain the consent of the parties, and to pronounce the words: "I join you together in the name of the Father, and of the Son, and of the Holy Spirit." It is probably held by Sanch., Coninc., Pont., Castr., Salm., Bon., etc., that if these words were not pronounced, a venial sin would be committed each time that the consent was manifestly demonstrated, but it is perhaps more probable that Boss., Rebell., Barb., and others do not excuse it even in the case of mortal sin, since the defect is concerning a grave matter (2). 74. — XIV. IMPEDIMENTS. This impediment is frigidity or impotence of the parties, preventing them from having intercourse suitable for procreation. This impotence, if it is permanent and precedes the marriage, cannot be removed except by a miracle, or by sin, or with the danger of death, and, according to the law of nature, it invalidates the marriage, as is stated in chapter Fraternitatis, concerning frigidity and maleficence. Impotence, however, can arise 1. from a curse: and then, if the curse cannot be removed within three years without sin, the marriage is invalid, as is stated at the end of that title. It can arise 2. from frigidity: and then, likewise, if intercourse suitable for procreation cannot be consummated between the spouses within three years, the marriage is invalid. Saint Thomas teaches the same (3) in the case in which a man has such an aversion towards a woman that he cannot, in any way, have intercourse with her for three years, and likewise, Albert., M., Sanch., Silvest., Ang., Tab. Turrecr. argue against Soto (4). It can arise 3. from a disproportion of the members, namely, if the woman had a vagina that was too narrow; and then, if she could not

be made suitable for intercourse except by an incision with the danger of death, or of a grave illness (in which there is always a moral danger of death, as rightly stated by Sanch. and Ronc.), the marriage is invalid, as is stated in the aforementioned chapter Fraternitatis, where it is said that the marriage is null if intercourse cannot be had "except by" an incision, or by any other means that would inflict violence upon her... "so grave" that the danger of death is feared (5). 75. — Furthermore, three things must be noted. It must be noted 1. that in this case, the woman is not obliged to undergo an incision with the danger of a grave illness, as is rightly held (against some) by Pont., Castr., Tourn., Pontas, Sanch., Ronc., Salm., Bonacin., Soto, Croix, etc., because she is never considered to have voluntarily subjected herself to such a danger; however, she is obliged to undergo it with some grave discomfort and pain, as is most commonly and probably held by Sanchez, Bonac., Ronc., Spor., Salm., Croix, Soto, Escob., etc. (against Pontium, Castr., and Tourn.), because she seems to be obligated by the contract entered into, since it is necessary to preserve the husband's right to intercourse (6). However, if the incision could not be performed except by the hand of a surgeon, it seems not improbable that Con. Tourn. and Pontas would say that the woman is not obliged to undergo it with such modesty that it would be morally unbearable (7). And if the man is weak and unable to open the maiden's hymen, is the woman then obliged to to undergo the cutting of the hymen by some instrument? Pont., Castr., and others deny this, because, since the defect is on the part of the man, the wife is not obliged to do anything except to allow her body to be approached in an ordinary and natural manner, not in an extraordinary manner, to have the hymen cut. But Sanch., Vega, Angles, etc., more probably affirm that such a discomfort, although not to be endured in a natural manner in that case, should not be said to be (1) Lib. 6, n. 1093. — (a) N. 1094. — (5) Sup. q. 58, art. 1, ad 5. — (4) Lib. 6, n. 1096, v. II. If impotence. — (5) Ibid., v. III. If demuni and 1097. — (6) N. 1099, clrea fin. — (7) Ibid., in fin.

[*Latin ed. p. 552*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY.

540. Extraordinary impotence, while being the ordinary impediment to marriage for all, is also one that must be tolerated in certain circumstances. This is because, in some cases, there is no other way for a woman to become suitable for the transmission of her body's use, which has already been transferred to her husband (1).

Note 2: If a marriage is dissolved due to the wife's impotence, and she were to enter into marriage with another man, it would not be because she became suitable for the first husband through the use of conjugal rela-

tions. Therefore, the first marriage must be considered valid; however, this should be inferred by analogy with the second husband and the first. Thus, (regardless of what others may say), St. Antoninus, Sanchez, Silvestri, Angeli, Tournhem, and others teach this correctly. This is clearly deduced from the decree of the Fraternity, where it is stated that the woman should return to her first husband "because" (the words of the text) it is evident from the subsequent fact that what was known to him "is mixed with her" (2).

Note 3: When impotence is certain, the three-year period need not be awaited. At that time, the other party can freely leave the marriage (indeed, they are obligated to do so if there is an imminent danger of incontinence), and enter into another marriage, even by their own authority, if there is no scandal. However, if there is a scandal, as is commonly the case, they must absolutely appeal to an ecclesiastical judge and prove the impediment (3). When impotence is doubtful, if the doubt existed before the marriage, the party who doubts their own potency (meaning, they have a positive indication, not a negative one, since everyone is ordinarily presumed to be capable) cannot enter into marriage unless they make that doubt known to the other party, and they must be at least probably capable, as Dicast. Elbel, Card. and Viva say (4). If the doubt arises after the marriage, then a three-year period of experience is given (which begins from the attempted union), and experience is allowed, even if the spouses spill their seed (but unintentionally) outside the womb, as commonly taught by Sanchez, Castrop, Soto, Tournhem, Salm., etc., from St. Thomas (5). And when there is doubt as to whether the impotence existed before the marriage or arose after it, Bonaventure, Silvestri, Tournhem, Salm., etc. (contrary to Sanchez, Castr., Mazz., etc.) say that it should be judged to have existed before, unless, perhaps, some disease arose after the marriage from which impotence is presumed to have resulted (6). As for the external forum, observe what is noted in the work (7). Also, see what is said about marriages contracted between heretics or with heretics (8).

76. - XV. Rape. The Council of Trent (Session 24, Canon 6) also imposed an impediment due to rape. To establish this impediment, it is necessary that:

1. The woman was transported from one place to another, or at least from one house to another, by some means (but it is not sufficient if it is only from one room to another within the same house), where she remains under the power of the rapist, even if she is not known to him there; this is commonly taught by Sanchez, Salm., Concina, etc. (9).

2. The rape was committed solely with the intention of marriage; therefore, as is more likely held by Sanchez, Coninc, Holzm, Castrop, Salm., etc. (contrary to Bonac. Busemb., etc.), the one who rapes another with any other intention, even if it is to satisfy lust, does not incur this impediment.

For the Council understood this impediment to mean nothing other than promoting the freedom of marriage (10).

3. The rape was committed against the will of the woman; otherwise, if the relatives of the woman consent, the rapist, although he may incur other penalties for rape, does not incur this impediment, as commonly taught by Sanchez, Castr., Conc., Holzm., Coninc., Aversa, Salmant., etc. (11). And the same applies to...

(1) Lib. 6. n. 1100.

(2) N. 1098.

(3) N. 1101.

(4) N. 1102.

(5) N. 1103.

(6) N. 1104.

(7) N. 1105.

(8) N. 1105.

(9) N. 1107.

(10) Ibid. v. Requir. II.

(11) Ibid. v. Requir. III.

[*Latin ed. p. 553*]

OF THE REVALIDATION OF IRREGULAR MARRIAGES. 541. It is stated in c. penult. de Rectoribus: "He should not be called a kidnapper," if the woman has given her consent, and if he has betrothed her before she becomes aware of it, even if the parents object. Note here 1. that, according to the Council of Trent, besides this impediment, the kidnapper, and all others who assist in the act, incur excommunication by the very act; the other penalties imposed by the Council are not incurred until after a sentence is passed; Castropal, Sanch., Salm., etc. (1). 2. That the kidnapper of a woman, even if invited, incurs the impediment and the penalties, even if he had previously entered into betrothal with her, as correctly taught by Castr., Escob., Sa, Sanch., Conc., Corn., Salm., etc. (against some), since it is clear from the Council that the impediment is incurred whenever a woman is kidnapped (2). It is doubtful, however, whether in the case of kidnapping the betrothal is also valid? Bonac., Pont., Sanch., Dicast., Salm., and others commonly affirm this. However, La Croix and Holzm. (3) hold the opposite, as do Perez, Pichler, Kirner, and others; to me, the former view seems more probable, since penal laws are extended to cases in which the same reason applies, as stated above, treatise 2, no. 78; but in our case, the same reason does not apply, for marriage is not dissolvable as betrothal is.

POINT VI. OF THE REVALIDATION OF IRREGULAR MARRIAGES. 77. When is an impediment to be called hidden? — 78. What if the parish

priest and witnesses were aware of the impediment, etc.? — 79. If someone entered into a marriage falsely, is he bound to produce true consent? — 80. Is someone who entered into a marriage out of fear, or falsely, bound to disclose the nullity? — 81. If the impediment is removed, must the nullity be disclosed to those who were ignorant of it? — 82. How should consent be demanded from someone who is ignorant? 77. — It should be noted here 1. that a marriage that is probably valid should be considered certainly valid, because the Church is presumed to certainly dispense in the impediment whenever there is a true probability of the validity of the marriage, as stated above, treatise 1, no. 27. It should be noted 2. (as stated here, no. 29) that to revalidate a marriage that is null due to a hidden impediment, only the external consent of the spouses is sufficient, without the assistance of the parish priest and witnesses; for that assistance was already present. Therefore, it should be noted here that an impediment is to be called hidden, according to Fagnanus, when it is known only to 4 or 5 people in the area; but according to Lambertini (4), as well as Tiburt., Navar., Thes., and Syro, it is considered hidden even if it is known to 7 or 8 people. Others say that Nav., Sanch., Azor., Avil., Salmant., Reginald., Molin., Tournel., Bonac., Castr., Tolet., etc., commonly say that a fault or act is to be called hidden when it is known only to the majority of the region, parish, or neighborhood, where at least 10 people live; and I know that the Sacred Penitentiary dispensed in a certain case in which the impediment was known to 10 people. However, this should be understood whenever there is no prudent fear that the impediment will become public, because in that case, dispensation cannot be granted in the impediment as if it were hidden, even if it was known only to two people, as Layman, Sporer, Croix, Hurtad, and the same Fagnanus observe, when in the clause of the Sacred Penitentiary it is said to be entirely hidden, as is usually said in the impediment of a crime. Against this, Sanchez and Lambert, with Bon. de Leone, Girib., Tiburt., Navar., and many others, say that sometimes (1) Lib. 6, no. 1107. See note here. — (2) Lambert. Notif. 87, no. 45, at the end. — (3) La Croix 1. 6, p. 3, no. 54; Holzm. de matr. t. 7, no. 271. — (4) Card. Lamb. notif. 87, no. 46, at the end.

[*Latin ed. p. 554*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. It is made public in a material sense, because the matter has already become known to the neighbors; but it is hidden in a formal sense, because the impediment is unknown; and therefore, recourse can also be had to the Sacred Penitentiary for a dispensation, as if it were hidden (1). 78. – Having established these premises, the question arises: 1. Is it necessary to validate the marriage before the parish priest and witnesses, when, at the time the marriage was contracted, the spouses were aware of the impediment? Sanchez, Ledesma, and Croix, and others, assert this with probability, because at

that time they were not witnesses to the validity of the marriage, but rather to its nullity. But it is more probable that Coninch, Tambur, Gobat, and others deny this, because their presence was not prescribed by the Council of Trent to testify to the validity of the marriage, but to its celebration, lest anyone (as the Council expresses it) enter into multiple marriages fraudulently; indeed, this is the opinion of the Sacred Penitentiary (2). 79. – The question arises: 2. Is the one who contracted falsely obligated to validate the marriage through true consent? Castr, Roncaglia, Conc. Salm., etc., assert this, saying that since one party has already delivered his body through consent, the other party is obligated to also deliver his body through true consent, in order to maintain equality. But it is more probable that Sanchez, Navar, Henriq, Arag, Hurtad, Gutt., etc., deny this (provided that the validation of the marriage is not required to repair damages caused by fraud); the reason is that, lacking the consent of the other party, the contract was null, and therefore, there was no delivery of the body by the other party, so that the same party remains free in that case, just as if he had never given consent (3). 80. – The question arises: 3. Is the one who contracted falsely, or under duress (in which case the marriage is null, as we said in number 64), if he wishes to validate the marriage, obligated to reveal the nullity of the marriage to the other party, by giving true consent? The common opinion denies this, following Sanchez, Lessio, Navar, Laym, Tournely, Roncaglia, Bonac, Salmant, and many others, along with St. Antoninus and St. Thomas (4), who, speaking of a marriage begun under duress, say: "From the free consent of the one who was first coerced, a marriage is not made, unless insofar as the prior consent remains in the other; therefore, if it were withdrawn, there would be no marriage." Therefore, if the one who suffered duress gives consent, the marriage is validated. The reason is that in a marriage contract, physical simultaneity of consents is not necessary, but moral simultaneity suffices, namely, that one party gives his consent, while the consent of the other party, once given, still remains in effect, namely, through the marital act, or through cohabitation. The same is held by Father Cuniliati (5) along with St. Bonaventure, Paludano, and Solo; and the fear that, if the other party were to give new consent, he might not do so, does not invalidate this, for this is not a true dissent, and meanwhile, the consent once given remains. What strongly supports this opinion are two canons, which are cited in its favor: The first is in chapter Insuper 4, Qui matrim. accus., etc., where the argument is as follows: "The bride, after having been unwilling, is afterwards heard to have spontaneously acknowledged" the marriage. The second is in chapter Adid. 21 de sponsalib., where it is said: "Although she was unwilling from the beginning when she was given to him," nevertheless, because, after a year and a half, she seems to have consented by living with him, she is obligated to return to him. Therefore, according to these (1) Lib. 6. n. 1111. – (2) N. 1112. – (3) N. 1113. – (4) S. Thom. suppl. quæst. 47, p. 4. ad 2, (5) Cuniliat. de matrim. 2 29. num. 2 et

3.

[*Latin ed. p. 555*]

OF THE REVALIDATION OF A MARRIAGE THAT WAS ORIGINALLY INVALID. 543. Spontaneous union, or cohabitation, is equivalent to free consent. However, it must be noted, as Sanchez, Navar, Tournely, etc., point out, that in order for consent to be considered free, the party must know that no marriage exists (1). The second opinion absolutely maintains that, in order to revalidate a marriage, the nullity must be made known to the other party; thus say Castropalaus and Hurtadus apud Salmant., and especially Pontius with Comitolo (2), who recounts a certain declaration by Clement VIII, because, having been consulted in a similar case, he responded in this way. The reason is that the consent given by the party who freely agreed was, from the beginning, invalid because it concerned an impediment; therefore, when the impediment is subsequently removed, a new consent is required to revalidate the marriage, expressed through sensible signs, since the first consent could not endure because it was invalid. Cardinal Lambertini (3) holds that, since we are dealing with the value of the sacrament, this second opinion must be held as the safer one; all the more so because the same Father Sanchez (as he says) who defends the opposite view, calls it the more probable one. The reason given above, however, seems to be sufficiently well-founded. But I do not see how it is possible to respond to the texts cited above, and especially the second in c. Ad id, 21, de sponsal., where the case was that a certain girl, who had previously married unwillingly, then judged the marriage to be null, and had passed to a second marriage; and because she had lived with the first husband for a year, the Pope ordered that she return to him, based on the presumption that she had already given her consent through her long cohabitation: "Although, at the beginning (I repeat the words of the text), she was given to him unwillingly, nevertheless," because after a year of living there, she seems to have consented, "she is to be compelled to return to him." Therefore, the Pope did not have a true reason, as Pontius says, that the consent freely given by the man in that case was, in itself, null, as if it fell upon an impediment; but rather, that the husband's consent, morally persisting, and uniting himself with the consent subsequently given by the woman through her cohabitation, had already revalidated the first marriage, and therefore ordered that the woman be compelled to return to him. As for the declaration of Clement VIII cited to the contrary, Roncatius says that it is not sufficiently certain, or that the Pope spoke as a private doctor in that case. 81. — Question 4: If a marriage is null due to some impediment, and is to be revalidated by a new consent after the impediment is removed by dispensation, must both parties be aware of the nullity? Pontius, Lessius, Castr. with Guttier., Hurt., Comit., and others say that the prior consent given by the party who was unaware

of the impediment was null; the subsequent consent of the same party, however, is null if, while unaware of the nullity of the marriage, he gives his consent, because he intended to consent to the person who was already his spouse in substance. On the contrary, Soto, Palud., Ledes., Rodriq., Ang., Salmant., etc., say that knowledge of the nullity of the marriage is not necessary, but that simple consent given by the party who is unaware, either expressly or at least through external signs, is sufficient; because, although the prior consent was null due to an impediment imposed by the Church, it was nevertheless valid according to natural law; therefore, after the impediment is removed, the prior consent is sufficient, which already endures in effect through the conjugal act, or through cohabitation, or through other external signs. Indeed, Lambertini (later Benedict XIV (4)) recounts a certain brief of Clement XI, April 2, 1701, in which (1) Lib. 6, v. 1114. — (2) Ibid. — (3) Lambertini notif. 87 n. 69. — (4) Notif. 87, p. 89.

[*Latin ed. p. 556*]

544 TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. The Pope has revalidated certain marriages of nations called the Procueles and Quartarones, which were considered invalid, requiring a new expression of consent. Regarding this point, whatever has been said in the moral treatise (1), we now state that, given the declaration of Benedict XIV, issued on September 27, 1755, which I recently examined in volume 4 of the Bullarium, page 346 (2), where it is stated that, in the case where a certain man had contracted a marriage that was null due to the impediment of consanguinity, but in good faith, and his wife, unaware, attempted to strengthen it for fear of scandal from separation, the Pope granted a dispensation, and also declared (see ibid. § 7) that when the impediment arises not from divine or natural law, as when consent is given while the other spouse is living, or if one is an unknown slave, or there is an error in the person; but from ecclesiastical law, in that case, the Pope can indeed strengthen the marriage by granting a dispensation, providing a new consent from the party unaware of the impediment, considering the consent given by that party initially to be valid, which consent was valid according to natural law; then the Pope removes the impediment at the root of the marriage, as if no impediment had existed from the beginning. It is helpful to note the words of Benedict: "Moreover, the grace conceded" implies a dispensation to the root of the marriage, which is customarily granted by the Roman Pontiffs in cases of great necessity, and when it concerns an impediment to marriage arising not from divine or natural law, but from ecclesiastical law; and through it, it is not as if a marriage that was null is not contracted, but the effects are removed that, due to the nullity of such a marriage, existed before the dispensation was granted, and even in the very act of contracting the marriage."

However, when this special papal dispensation is not present, one must

not deviate in practice from the initial opinion, primarily because the Sacred Penitentiary, when granting dispensations for marriages that are null, expressly includes the clause: "So that the woman (or man) may, having been certain of the nullity of the prior consent, secretly contract a new marriage with each other." And this, as Lamb. (3) plausibly states, is a positive condition, and not merely an instruction, as Sanch., Bonac., etc., contended; for, according to legal experts, the ablative absolute implies a true condition, as is found in L. A. testatore, ff. de condit., etc. (4). However, this is understood outside the case of urgent necessity, because if the nullity of the marriage is revealed, and there is fear of danger of death, or infamy, or scandal from separation, then it is observed that what will be said in tractate 20, no. 57, applies in that case, where it is stated that the bishop can grant a dispensation; and if necessity does not allow for delay, as several doctors say, the confessor can declare that the law of the impediment does not obligate in that case, so that the marriage can be contracted, without a dispensation.

82. — Question 5. If consent is required from the party unaware (according to the first opinion of the preceding question), how is it to be obtained? The common opinion is with Sanc. Card. Holzm., that it is sufficient for the conscious party to the impediment, after the impediment has been removed by dispensation, to say: "At the time when you contracted marriage with me, I did not give true consent, I now give it; do you also give it?" because the consent given by the party unaware in this case (1) Book 6, no. 1175. — (2) See Const. Etia matrimonialis, ed. Mech., vol. 11, p. 351, and the text of the subsequent decree Cum super. — (3) Notif. 67, no. 68. — (4) Book 6, no. 1175, at the end.

[*Latin ed. p. 557*]

OF THE DISPENSATION, etc. 545. In some cases, it no longer depends on the first; and it is rightly said that there is no true consent where there is no contract. Thus, I also believe that it suffices to say, as Bus, Salm, Caj, Nav, and Trull state: "I doubt the validity of our marriage; let us renew our consent," because in that case, the renewed consent would already be independent of the first. Many doctors also admit that one can say: "Tell me, if our marriage had been null, do you now intend to contract marriage with me again?" I would not admit of this method, unless it is only when a party, unaware of the nullity of the marriage, is led to suspect it by such a question; otherwise, that consent would depend on the first, and would not be sufficiently valid, as stated above in the preceding question. Others admit, even if one were to say: "If you had not accepted me, would you accept me now?" Or: "For my consolation, let us give our consent anew to our marriage." But I do not entirely agree with these methods, because in them, the consent does not certainly prevent it from depending on the prior one. And I can even less admit what some hold, that the marital

act alone, accompanied by affection, is sufficient. This is admitted only by Sanch, Tourn, Bonac, Sot, Cajet, Coninch, Salm, Ronc, and the *Instructio pro Confess. tyronibus*, and others, only in the case of necessity, namely, when other means cannot be used without the danger of serious harm, as stated above, number preceding. Nor does the clause *Certiorata parte* then obstruct, required by the Holy Penitentiary, because in such a case of necessity, it is presumed, as Lambertini states with Tibur, Navar, in the cited passage, that the Church wishes to dispense with such a condition as is morally impossible; whereas, on the contrary, it is very well founded that it suffices to revalidate a marriage that has been nullified by the marital act alone, or by voluntary cohabitation: as is stated in c. Ad id 21, de sponsal., c. Furthermore, in the chapter *Significavit, de eo qui duxit*, it is said that cohabitation, or the marital act freely and voluntarily following a marriage that has been nullified by force or fear, is understood to strengthen it (1). See n. 80. POINT VII. OF THE DISPENSATION REGARDING IMPEDIMENTS TO MARRIAGE. 83. In which impediments can the Pope dispense? (and in which the bishop; referring to treatise 20, number 54 and following) — 84. Of the just causes for dispensing; whether all impediments must be explained. — 85. Whether all circumstances, especially incest. — 86. Whether all degrees. — 87. Of the clauses of the Holy Penitentiary. — 88. Of the formulas of supplications. — 89. Of the formula for executing the dispensation. 83. — First, let us speak of those who can dispense. And speaking of those who can dispense with impediments, it is certain that the Pope can dispense in all impediments, whether they are impediments or diriments, that have arisen from ecclesiastical law; otherwise, in those that are of divine or natural law, as stated above, number 81; for, according to the more probable and common opinion of Suar, Pont, Castrop, Sylvest, Salas, etc., the Pope, although he may dispense in those in which divine law arises from human will, such as vows and oaths, cannot dispense in those in which the law depends solely on divine will. And this opinion is favored by St. Thomas (2), who says: "In the precepts of divine law, which are from God," no one can dispense, except God, or he to whom He has specially committed this power." But, says Castrop, this special commission is not...

(1) Lib. 6. n. 1117. — (2) r. 2. q. 97. a. 4. ad 3.

[*Latin ed. p. 558*]

546. TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. The words given to the priest are: "Whatever you shall bind," etc., or, "Feed my sheep," for these impart a general, but not a special, commission. We say, along with Suarez, Sotelo, Navarrette, and others, that the priest, in a particular case, can, as a universal doctor of the Church and as the supreme interpreter of divine will, declare that divine law does not obligate in that instance (1). See what is said in treatise 2, paragraph 56. Regarding the power that bishops have to grant dispensations from impediments to mar-

riage, see more fully what is said in treatise 20, on privileges, paragraphs 54 and following. 84.—II. When speaking of just causes for obtaining a dispensation from impediments, the doctors assign the following: 1. The extinction of a great quarrel, or hatred, or scandal among relatives. 2. Inequality in the marriage, unless among relatives who marry due to a lack of dowry or other means. 3. The preservation of property within the same family. 4. The merits of the one requesting the dispensation. 5. The woman's age exceeding 24 years. 6. The provision of money, which is spent by the Pope on works of piety, as the doctors commonly admit, and as the *Præceptores* teach; and other causes of this kind (2). 85.—Note here that 1. In order that the dispensation not be surreptitious, the following must be explained in the petition: 1. All impediments of consanguinity or affinity that exist, even if they are of the same degree, as Sanchez, Pontius, Anacletus, Castropalus, Escobar, and the Council of Salm, along with the *Rota*, Roncaglia (contrary to others), commonly say, because although such impediments are not of a different species, they are distinct in number, and therefore make the dispensation more difficult. And there is no further doubt about this, for Benedict XIV, on September 30, 1755, in a certain brief, the beginning of which is "Et si matrimonialis," in the bull, volume 4, page 346, and number 50 in the order, declared and established that a certain marriage celebrated with an impediment of double consanguinity had been and would be invalid, although a dispensation had been granted for one degree, which had only come to light. And likewise, by the same reasoning, when there are several and different impediments, e.g., vows and consanguinity; but they are of such a nature that they make the dispensation more difficult; as if someone wanted to marry a relative, with whom they have had intercourse with their sister, then it is not sufficient to request the dispensations separately, but it is necessary to request them jointly; thus, Salm and others, along with Salas, Rodriguez, etc. Coninch and Aversa object, if the impediment of having intercourse with the sister was concealed, and that revealing it would be scandalous; because then, they say, it is possible to obtain the dispensations separately, namely, the dispensation from consanguinity from the Dataria, and the dispensation from affinity due to the intercourse from the Penitentiary. But we say that at least in the petition to the Penitentiary, both impediments must be explained (3). If, however, someone has obtained a dispensation from affinity due to having intercourse with the sister of the spouse, and then discovers that fact again, they do not need a new dispensation, even if the first one has already been given for execution (4), and as we said in paragraph 67. They must 2. In the petition, explain all circumstances that have occurred, and which may make the dispensation more difficult, especially if there has been intercourse between relatives who wish to be joined in marriage. And this is not only if that intercourse has been had in order to more easily obtain the dispensation, as some- (1) Book 6, paragraphs 1119 and 1120.

— (2) Paragraphs 1129 and 1130. — (3) Paragraphs 1238 and 1139. — (4) Paragraph 1240.

[*Latin ed. p. 559*]

ON DISPENSATIONS, ETC. 547, but even if this end has not been previously established, as Sanchez, Laym, Coninc, Castrop, etc., say (contrary to Pontius, Salmanticensis, etc.). And on this point, all doubt ceases today, since it has been declared by Benedict XIV in the bull *Pastor bonus*, § 41, where a marriage celebrated between consanguineous parties, obtained through a dispensation, is declared invalid due to tacit incest (1). Also, if someone, having obtained a dispensation over a prohibited degree, has relations with the intended spouse before the dispensation is executed, a new dispensation is required, as Sanchez, Guttier, Gallego, etc., correctly say, contrary to some; and so declared the Sacred Congregation in May, 1635; for, according to the custom of the curia, when a new incest is revealed, the pontiff usually imposes a greater penance, and demands a larger sum of money (2). Conversely, if relations have occurred after the execution of the dispensation, as Lugo, Sanchez, Cajetan, Arminius, and Vega probably say, because then, having the dispensation executed, and the prohibition of marriage removed, the malice of incest also ceases. Also, if someone requests a second dispensation after having obtained a first one for the same offense, they must express the first; otherwise, if the impediment does not arise from any crime, or from a different crime, as commonly stated by Coninc, Aver, Salm, and the Council (3). 86.—It must be explained that all degrees of consanguinity, or affinity, by which the spouses are united, whether closer or more distant, are considered; for example, if they were united in the second and third degrees, or in the third and fourth degrees, as commonly stated by Pontius, Silo, Salm, Tourn, etc.; for although a dispensation is only required for the more distant degree, nevertheless, Pope Pius V in his *motu proprio* *Sanctissimus* declared that, having obtained a dispensation for the more distant degree, without mentioning the closer one, letters of declaration regarding the closer degree must be obtained. However, if these letters are not issued, the marriage will nevertheless be valid, but illicit (as declared by Benedict XIV in the brief mentioned in n. 85. And in the matrimonial decree, with the inserted decree *Cum super*, § 6, which also refers to the fact that it had been decided by the Sacred Congregation on March 18, 1722). However, if they are not united in the first and second degrees of consanguinity or affinity, in which, as Benedict states there, Pope Pius protested that he would not grant a dispensation unless the first degree was also expressly mentioned. Also, it should be noted that if the cause for the dispensation ceases before its execution, the dispensation itself also ceases. Conversely, if it ceases after execution, even if the marriage has not yet been celebrated, because the impediment has already been removed. Thus, it is quite probable, ac-

cording to Pontius, Suarez, Castrop, Salmanticensis, Silo, etc., contrary to Sanchez and the Dicastery, who nevertheless admit this as probable (4). 87.—Furthermore, the clauses that are usually added in the dispensation of the Holy Penitentiary must be noted. I. If it is so: that faith must be given to the petitioner, unless the contrary is established, as Sanchez and Cabass say. But here it must be noted that Benedict XIV in the bull *Ad apostolica*, under date of February 25, 1742, declared that the expression and verification of the causes are necessary for the validity of the dispensation. If, however, the spouses falsely stated that they were poor, and therefore the dispensation was granted in the form of poor people, the dispensation is also valid; as declared by the Sacred Congregation on September 9, 1679, in the *Monacelli* (5). It must be noted that to grant a dispensation over a vow of chastity, a simple temptation is not sufficient, but a vehement inclination is required.

(1) Book 6, n. 1154 and 1155.

(2) n. 1141.

(3) n. 1157.

(4) n. 1136.

(5) Monac. vol. 5, title 16, form 2, n. 33.

[*Latin ed. p. 560*]

548 TRACT. XVIII. ON THE SACRAMENT OF MATRIMONY. Concerning continence: even if the danger is of a single lapse, as Tournhem and Pontanus rightly say (1). II. After a sacramental confession; therefore, according to this clause, it is necessary that the confession precede so that the dispensation may be granted, as Tournhem and Sanchius say. III. The occasion for sinning is removed; it is understood that the occasion is voluntary, because if it were necessary, it suffices (as Tournhem says) that those means be chosen by which the proximate occasion is removed. IV. Provided that the impediment is hidden: when the impediment is to be considered hidden, it was already stated in n. 77. V. A grave penance is imposed upon him; understand this according to the strength of the penitent, as Tournely rightly notes, along with Tiburtius and Navar, who says that it is possible to impose that he fast once every six months, or recite the Rosary three times each week, or attend confession (which I believe is sufficient once a month), and the like. But if, Tournely adds, the penitent has already performed the due penance for his sin, then the penance can be moderated, provided that it is not imposed by the Penitentiary, as if it were a commutation. VI. In the presence of witnesses, under the penalty of excommunication *latæ sententiæ*. These letters must be immediately torn, but understand this morally, namely, within three days after they have been demanded; and understand this if the marriage has already been contracted; otherwise, if it is still to be contracted, then the dispensation must be secretly kept by

the parish priest, or at least noted in some book that no one else can see, so that if it should be necessary (namely, if the impediment should become public), he can provide proof of the dispensation obtained (2). 88.—It is especially important here to note the formulas for obtaining a dispensation from the Penitentiary regarding the aforementioned impediments, or vows, or irregularities. If a dispensation is requested regarding impediments to marriage, it should be written as follows: "Most Eminent and Reverend Lord. Concerning: 'N.N., having carnal knowledge of a certain woman, gave testimony' regarding the marriage of N.N. to his sister. And since the impediment is hidden, and if he did not marry his sister, a great scandal would occur, therefore, he humbly prays" that "Your Eminence would graciously grant him a dispensation." The response should be sent to Naples (or to Salerno) to the Reverend... (here, the name and surname are expressed) approved confessor. And for this, he will receive grace, etc." If, however, the marriage has already been contracted, he can write thus: "N.N., ignorant (or aware) of the impediment, contracted marriage with a woman, who is the mother (or sister) of someone with whom he had previously had carnal knowledge; but since the impediment is hidden, and therefore cannot be separated without scandal, he humbly prays for absolution and a dispensation." The response, etc." Concerning vows of chastity or religion: "N.N., being bound by a vow of chastity, and being in grave danger of incontinence, humbly prays that Your Eminence would graciously grant the petitioner a dispensation from the aforementioned vow, so that he may be able to contract marriage, etc." Concerning irregularities: "N.N., a priest, has incurred an irregularity due to homicide (or abortion, or violation of the censure), etc.; and since he is in danger of infamy if he abstains from celebrating the sacraments, therefore, he humbly prays, etc." (1) Lib. 6. n. 1143. — (2) Ibid. *in fine*.

[*Latin ed. p. 561*]

OF DIVORCE. 549 Outside, on the heading: "To the Most Eminent and Reverend Lord, Most Reverend Lord," to the Major Cardinal Penitentiary, in Rome. 89.—The confessor to whom the execution of the dispensation is entrusted may use the following formula when granting the dispensation, and administering the sacramental absolution: "And furthermore, by the authority of the Holy See granted to me, I dispense you from the impediment of the first (or second, or first and second) degree, arising from the illicit union you had with the sister of the woman with whom you contracted (or intend to contract) marriage, so that you may validly contract marriage with her, with renewed consent, and I declare any offspring you may have (or have had) to be legitimate, in the name of the Father, etc." But if the dispensation is from a vow of chastity, he will say: "Furthermore, I exchange the vow of chastity which you made, so that you may be able to contract marriage and use it, in the works which I prescribe to

you, granting this dispensation, in the name, etc." But if, despite the vow of chastity, someone has already contracted marriage, he will say: "Furthermore, notwithstanding the vow of chastity which you made, so that you may remain in marriage and fulfill marital duties, I dispense you, by the authority of the Holy See granted to me, in the name, etc." If anyone wishes to know what privileges the Holy Penitentiary possesses in granting dispensations from impediments to marriage, in papal cases, censures, irregularities, vows, oaths, uncertain restitutions, see treatise 19, no. 148. CHAPTER III. OF DIVORCE. 90. Of divorce with regard to the bond. — 91. With regard to the person; and how many causes can there be for divorce. I. Cause of delict. II. Illness. III. Consent. — 92. IV. Fear of harm. V. Adultery. — 93. But 1. adultery must be perfect and certain. 2. Whether the spouse is obliged to separate. — 94. Cases in which one cannot separate from the adulterer. — 95. Concerning the right to send away the adulterer. — 96. Whether this can be done by one's own authority. — 97. After the divorce, which of the spouses can enter religion. 90. — DIVORCE can be twofold, with regard to the bond, and with regard to the person. Divorce with regard to the bond can only be granted in three cases. 1. If one of the spouses dies. 2. If of two unfaithful spouses, one is converted to the faith, at least if the unfaithful one refuses to live peacefully together without offending the Creator. 3. If, before the marriage is consummated, within the first two months for this purpose granted by law, one enters religion. Therefore, although marriage is valid between unbelievers, it is not indissoluble; it becomes indissoluble when both spouses are converted to the faith, provided that they consummate the marriage after their conversion; otherwise, the Pope can also dissolve it in some (but very urgent) case. If only one is converted, that one cannot go to other marriages; unless in the case (as mentioned) in which the other, not converted, wants to lead the former into sin; and refuses to live together without offending the divine Name, as expressed in chapter Concerning divorce. This was the case in the early times, as the Apostle wrote, 1 Corinthians 7:13 and following, because at that time, because of the miracles which often occurred among the faithful, many unbelievers were converted to the faith; but today, since miracles are no longer so frequent, Sanchez, Pont. Tourn. Conc. Salmantic., etc., rightly say that it is no longer permissible to live with an unfaithful spouse.

[*Latin ed. p. 562*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. due to the danger of perversion; therefore, in our present times, if an unfaithful spouse, after being admonished, refuses to convert, the faithful spouse may and should abandon him, and may enter into another marriage; as is stated in the instructions of Gregory XIII and Saint Pius V (1). However, speaking of marriage between the faithful, it is certainly indissoluble as long as both live, unless one of them had professed religion before the consummation of

the marriage. Therefore, spouses are granted two months from the celebration of the marriage in which they are not bound to perform the conjugal debt, as is stated in chapter 25, question 7, and from the Tridentine Council, session 24, canon 6. If someone were to embrace religion within that month, the profession would be illicit; but not invalid, as commonly stated by Sanch, Pont., Salm., Trullench, etc. (2). However, this is understood only if the marriage is not necessary to legitimize offspring, or to repair a scandal, or to protect the innocence of the spouse; for then the spouse could not abandon her, even by entering religion (3). The question is whether the Pope can, by dispensation, dissolve a valid marriage. There are two opinions on this matter. Pont., Gon., S. Bonav., Scotus, Castr., Sot., etc., deny this, saying that a valid marriage is of the same nature as a consummated marriage, and is therefore indissoluble by divine law. However, Bellarmine, Sanch., Caj., Navar., Vasq., Coninc., Salm., etc., affirm that the Pope, as vicar of Christ, can dispense in some matters that are of divine law, but concern human acts, provided there is a grave reason, as would be the case, for example, if impotence of the spouses were to arise, or an imminent scandal, or the public good. They also add that if there is a disparity of condition, a contagious disease, perverse disagreements, or mutual consent of the spouses, then a divorce may be granted; but the Council of Trent does not admit these four reasons, at least if the necessity of the public good does not require it; otherwise, very few valid and firm marriages would remain (4). 91.—With regard to separation and cohabitation, while the conjugal bond remains, there are six reasons for which a divorce may be granted. I. If one of the spouses commits a harmful offense against the other, such as attempting to lead him into sin, or if he should become deficient in the faith; then the innocent spouse may, indeed should, abandon him, if he is in danger of perversion; and if the offense is public, and if the divorce is granted by the judgment of the Church, then it may also be a religious divorce, as is stated in canon De illa, de divort. (5). II. If one of the spouses has leprosy, or suffers from another contagious disease, or if he is insane, furious, or malicious, or obsessed; then the other spouse may be separated from him, provided he remains in grave danger of some harm (6). However, Saint Thomas says (7) that in the case of leprosy, the healthy spouse is bound to perform the conjugal debt, but not to cohabit. III. If the spouses separate by mutual consent, which is otherwise not permitted, unless both enter religion, or at least unless the woman professes religion, the man may enter into the sacred orders (8). However, if the spouse who remains in the world did not know that he was in a case where he was bound to vow chastity, Sanch. and others say, contrary to Anaclet. apud Ferraris (9), that even after the given consent, he can recall the spouse who has already professed. (1) Lib. 6. n. 957. — (2) N. 558. — (3) Ibid. — (4) N. 559. — (5) N. 575 et 575. — (6) N. 563. 4. IV. Morbus. — (7) Sup. q. 64. a. 1. ad 4. —

(8) Lib. 6. n. 975. — (9) Ferrar. Bibl. v. Conjux. n. 23.

[*Latin ed. p. 563*]

OF DIVORCE. 551 92.—IV. A just cause for divorce also exists in the cruelty of a spouse, c. From the transmitted text, concerning the loss of property, and this is permissible even if the spouse is taken by just indignation, namely, because of some fault of the spouse themselves, as is held in chapter De Benedict 33, question 1. Sanch. Salm. and others commonly say that it is sufficient for divorce if a spouse fears a serious evil for themselves, or for their children, or for their relatives from the other spouse, or from those associated with that spouse; and for a serious evil, not only threats of death or serious injury are understood, which the spouse is accustomed to carry out, but also frequent scoldings, and serious insults according to the person's status, e.g., if they are of noble birth (1). It is asked whether mere beatings are sufficient for divorce? Pont. Ronc. Sanch. Silv. Arm., etc., commonly say that it is permissible for a husband sometimes to beat his wife, provided that he does not do so frequently, nor severely; therefore, Sanch. says that the wife cannot be separated from the husband, if the beatings are mild (Salm. makes an exception if the wife is of noble birth). Roncagl. Bonacin. Castrop. and Sanchez add that, even if the beatings were severe, but she was only struck once, and there was no reasonable fear that they would be repeated (2). However, it should be noted with Sanch. Salmant. Castrop. Anacl., etc., that such a separation due to cruelty cannot be made without the authority of a judge, unless there is a danger of damage that cannot be tolerated, or unless the spouse who is afraid of the damage cannot litigate, or cannot go to a judge, or cannot easily prove the danger (3). V. If one of the spouses commits adultery, as is stated in Matthew, chapter 5, verse 32 and 19, 9. "And it hath been said, Whosoever shall put away his wife, let him give her a bill of divorce." his own, unless it be for fornication... "committeth adultery," and from the chapter Ex litteris, and from the chapter Significasti, concerning divorce, 93.—But concerning this V. cause of adultery, more things must be noted here. It must be noted 1. that for divorce to be granted, a perfect adultery is required, with the emission of seed, as Sanch. Fill. Bonac. Salmant. Escob. Led. etc., say probably, against Sotus, Silv. Conc., etc., because, by the name of fornication, consummation through the emission of seed is understood, by which the division of the flesh is made (4). And it is not sufficient to have some probability of this, but it is required that such a presumption exist, so that a moral certainty is founded, as commonly said by Sotus, Sa, Viva, with S. Bonavent. S. Antonin. and S. Thom. (5), such as if witnesses testify that they saw the couple naked together in the same bed, as is said in chapter Litteris, 12, concerning presumptions, and these circumstances are understood to be joined together (for it is not sufficient that they are found alone together), as Sanch. and Navar. say. Nor are mere touch, em-

braces, and kisses sufficient by themselves, as Pont. Viva, Sanch. Palud. Barb. Nav. Castrop. say. Against this, Sanch. Viva, Castrop. and others say that it is sufficient for the conscience, if one of perfect integrity testifies to the adultery, or gives some strong indication. And it is also sufficient (as Castrop. says with Menoch.) a letter from the wife in which she confesses her adultery. And so I also think it is sufficient, if the couple is seen alone together in the same bed (6). But is it permissible to grant a divorce because of sodomy or bestiality committed by a spouse? Innoc. Abul., etc., deny this, because these crimes are not fornications. Sanch. Sot. Castrop. Salm. Conc., etc., commonly affirm this, because, as they say, in this way the spouse violates the conjugal faith by dividing the flesh with another. However, Pontius rightly says that this opinion, although common, cannot be proven by reason, because it can always be said that without natural intercourse, the flesh is not divided (7). (1) Book 6, number 970, and 971, see Question 3. — (2) Number 972. — (3) Number 97t. — (4) Number 962, question III. — (5) In 4. d. 35, question 1, article 3, ad 4. — (6) Book 6, number 961. — (7) Number 962.

[*Latin ed. p. 564*]

TRACTATE XVIII. ON THE SACRAMENT OF MATRIMONY. 94.—It is to be noted that, on account of adultery, a husband is not bound to be separated from an adulterous wife; rather, he may be compelled to do so, so that she may be corrected, if no other means are available, as say St. Thomas (1), St. Bonaventure, Cajetan, Salmeron, etc. But he may be compelled to do so only if he would not thereby suffer a grave inconvenience, as commonly say St. Antoninus, Pontius, Castropus, Sanchez, Salmeron, Bonaventure, etc. (2). He may also be compelled to do so in order to avoid scandal, namely, so that it may not appear that he consents to his wife's sin, as say St. Thomas in the cited passage, Sanchez, Pontius, Salmeron, etc., and as is expressed in chapters "If a man," concerning adultery, and "Not only," canon 28, question 1. But this is understood (1) as say Pontius and Sanchez, if the adultery is public; (2) as commonly say Layman, Bonaventure, Tolet, Cajetan, etc., if no other means are available to remedy the scandal, and if the husband does not have a just reason to separate, such as if he would remain in danger of incontinence, or of some other grave harm, or if he believes that if he leaves her, she would become worse; hence St. Antoninus concludes: "Therefore, a husband is not bound to expel his wife, even if it causes him harm to his rights." Furthermore, it is probably added by Castropus, Layman, etc., along with St. Antoninus, that if a husband has already given sufficient indication that he cannot bear his wife's adultery, he is bound to do nothing else; because, in that case, the scandal of others would be pharisaical (3). Likewise, a wife is bound to separate from her husband, if it is necessary, not in order to remove scandal, because it is never presumed that a wife consents to her husband's adultery, but in

order that he may reform. However, it is difficult, say Suarez, Castropus, Salmeron, and others, for a wife to compel her husband to do this; indeed, it is difficult for a wife to correct her husband, and it is very rare that a wife can separate from her husband without great inconvenience; and likewise, it is difficult for wives to be compelled to deny their husbands their due, say St. Antoninus, Bonaventure, Sanchez, Fillon (4). If, however, a conjugal partner has already been reformed, and is in danger of incontinence, it would be fitting for the innocent one to reconcile with the reformed one, if it can be done conveniently, as say Salmeron. But I would not dare to obligate her to do so under a grave penalty (as Bus and Concinius wish), since, on the one hand, the Lord has already freed her from cohabitation; and, on the other hand, charity does not seem to obligate her to live with one who has broken his fidelity to her. Nor does it matter what is said in chapter "If anyone," concerning adultery, that he ought to receive the adulteress, but not often; for the Gloss rightly explains: "He ought to do so out of an obligation of honor, not of necessity" (5). 95.—It is to be noted in four cases that a divorce cannot be granted from an adulterous spouse, namely, (1) if he himself is guilty of adultery. However, it is probable, with Sanchez, Concinius, Bonaventure, Salmeron, Viva, etc., that he may be compelled to separate from one who persists in adultery, although the opposite opinion is held by Pontius, Dicastus, Ledo, Hurtado, etc., even though that opinion is also probable (6). (2) If one consents to the adultery of the other, as is stated in chapter "Discretion," concerning one who knows (7). But it is not sufficient to presume such consent the opportunity that the husband gave his wife to commit adultery, by leaving her, or by treating her harshly, as the text says; nor is it sufficient if he concealed the fact, because he could not, without great inconvenience to himself, prevent his wife from committing the offense, as commonly say Sanchez, Bonaventure, Concinius, Peyrere, Salmeron, etc., from St. Thomas (7). (3) If the wife has been adulterous without her fault, namely, if she has been forced (otherwise, if she consented out of grave fear, as Sanchez points out), or (1) Supplement, question 62, answer 2, ad r. — (2) Book 6, number 963. — (3) Ibid., volume, final paragraph. — (4) Number 964. — (5) Number 955. — (6) Number 966. — (7) Supplement, question 62, answer 1.

[*Latin ed. p. 565*]

OF DIVORCE. 553 If adultery had occurred through an inculpable error; thus, the common teaching of the Doctors, along with St. Thomas (1). However, the Dicastery states that if a husband believed his wife to be already dead, and then discovered her alive, he cannot be rejected by his wife; but the reverse is not the case (2). 4. If the injury has already been remitted, either before or after the divorce, as is presumed, if the innocent party knowingly cohabits with the adulterer, or remains in the same house, at the same table, and bed; especially if embraces, touches, and kisses are added;

thus, St. Thomas (3), Sanchez, Salm, the Dicastery, Trullench, etc. However, Sanchez, Fill., Salmantic., Aver., Villal., etc., note that if the spouse truly does not intend to remit the injury through these actions, he can always separate in conscience (4). 96. — Note 4: Even though the divorce was granted by a judge's decree, the innocent spouse always has the right to recall the adulterer, as the common Doctors teach (contrary to Soto), Sanchez, Silv., Sa, Castrop., Pont., Bon., Salm., Gutt., etc., along with St. Thomas (5), who says: "Although a divorce has been granted," it does not take away from him the right to demand what is owed or "to recall his wife," and therefore, the wife is bound to return to him, and to come back to him, "if she has been recalled." And for this, a new decree from the judge is not necessary (as Sanchez correctly states). Furthermore, Castrop. and Gutt. rightly point out that it will be difficult for an adulterous woman to be obligated to return to her husband, because she can always reasonably fear danger of death, or of being treated cruelly, unless there are probable reasons to the contrary (6). However, it is doubtful whether, when the innocent spouse himself falls into adultery, but after a divorce has been granted by decree, he is bound to return to the adulteress who recalls him? Some, such as Pont., S. Anton., S. Bon., Conc., and Soto, affirm this. But it is more probable that Sanchez, Bon., Fill., Salm., Regin., and others, along with St. Thomas (7), deny it. The reason is that the first adulterer, by decree, has already been completely deprived of all rights over the innocent party. However, St. Thomas, along with others, states that the judge can compel the adulterer to reunite, in order that both the soul of the adulterer and that of others may be cared for, and scandal avoided (8). 2. It is doubtful whether a divorce can be granted by the innocent party's own authority? There are three probable opinions. The first, with Bellarmine, Aver., and Conc., and absolutely with St. Thomas, denies it. The second, with Laym., Pont., S. Antonin., Salmantic., etc., distinguishes: it affirms if the adultery is notorious, but denies it if it is hidden; because then the infamy of the adultery would be unjustly exposed. The third, with Sanchez, Soto, Abb., Bonacina, Sa, Fil., Led., Regin., etc., absolutely affirms it, whether the adultery is public or hidden. If it is public, it is proven from chapter "Ex parte," 9, on marriage, where it is said: "To no one is it permitted to put away his wife" without a manifest cause of fornication. Therefore, it is permitted if the fornication is manifest. If it is hidden, it is proven from chapter "Dicit Dominus," 32, question 1, where these words are found: "Wherever there is fornication, or a suspicion of fornication" (it is understood that this suspicion is that vehement suspicion which establishes moral certainty, as stated in n. 93), the wife is freely dismissed. It is said "freely," therefore, neither a decree nor a license is required; for the Lord has absolutely granted the right for a spouse to separate from an adulterer. And I believe this opinion to be more probable, at least when the adultery is on the part of the wife; for it would be very difficult for a husband to bring the infidelity of his wife to court,

which would be (1) Suppl. q. 62. a. r. — (2) Lib. 6. n. 966. v. Tertius. — (3) Suppl. q. 62. a. r. — (4) Lib. 6. n. 966. v. Quartus. — (5) Suppl. q. 62. art. 6. ad 3. — (6) Lib. 6. n. 967. — (7) Suppl. q. 62. art. 6. ad 4. — (8) Lib. 6. n. 967. Dubit. 2.

[*Latin ed. p. 566*]

TRACTATE XIX. CONCERNING CENSURES AND IRREGULARITIES. a perpetual reproach to him. And if, perchance, a judge should compel him to cohabit, as Bonaventure says, he would then be bound only to cohabit, but not to fulfill marital duties (1). 97. – Finally, it should be noted that, once a separation has been decreed by sentence, the innocent spouse may enter religion, as is stated in Agatosa, chapter 27, question 2, and may even receive the sacraments, as the common doctors say; on the contrary, the adulterer cannot become a religious or a priest, unless with the permission of the other party, or unless the other party has already taken on an irrevocable state of life. Furthermore, even if the innocent party has professed religion, they can revoke the other's vows and require restitution. It is said, unless with the permission of the other party; but even tacit permission suffices, for example, if one party, knowing that the adulterer wishes to change his state, can conveniently do so, they should not prevent him. And, as Sanch, Coninc, Bonaventure, Salm, and others say in chapter "Gaudemus" concerning the conversion of spouses, even if one party refuses a request for reconciliation, it suffices if the adulterer has not been recalled for two years, as is prescribed in the authority. But today, in c. ad 1. Jul. de adult. (2). It should be noted here that, once a divorce has been legally granted, the children are to be raised by the innocent spouse; and with regard to expenses, if the divorce occurs due to the father's fault, the children are to be supported at the father's expense, as is expressed in the authority, in c. Divort. etc. And the same applies if the divorce occurs due to the mother's fault, as Laym, Castr, Sanch, Silv, Pal, and others commonly say, contrary to a few. However, Sanch notes, in common, that in order to be held liable for these expenses, a judicial sentence is required (3).

TREATISE XIX. CONCERNING CENSURES AND IRREGULARITIES. CHAPTER I. CONCERNING CENSURES IN GENERAL. POINT I. CONCERNING THE ENACTMENT OF CENSURES.

1. What is the nature of a censure?

2. When is a censure said to be "latae sententiae," and when is it "ferendae sententiae"?

3. Who can impose censures? Concerning censures inflicted under duress.

4. What is required in order for a subject to be subject to a censure, etc.? Can bishops, or kings, etc., impose censures? Can the community, etc.?

5. Can a prelate impose censures outside of a trial on his subjects, and

what if the subject is outside of the jurisdiction?

6. Can a foreigner be censured?

7. What excuses are ignorance and fear? And can a censure be imposed for past offenses?

8. Concerning the solemnity required for the promulgation of censures.

9. What if the cause is false or doubtful?

1. A CENSURE is defined as: "A spiritual and medicinal penalty by which certain spiritual goods are taken away from the delinquent and contumacious person." A censure is divided into three parts: I. Excommunication, suspension, and interdict. II. That which is imposed by law, namely, by the general and permanent law, and that which is imposed by a man, namely, by a prelate by a general sentence (or statute) on those who commit a certain offense. A general sentence, or statute, refers to a place and to future sins; therefore, if a subject commits a sin outside of that place, he does not incur a censure.

(1) Book 6, n. 968.

(2) N. 969.

(3) N. 976.

[*Latin ed. p. 567*]

ON THE DECLARATION OF CENSURES. 555, canon 2, concerning constitutions in Usküb... subject to whom a censure is declared, even if they commit the offense outside the diocese of that authority, are not considered bound, since obedience is not rendered to the one who has jurisdiction outside his territory. However, a particular censure usually stems from past offenses and is directed at specific individuals; therefore, when it affects a person, it can be applied to a subject even if he is exempt, citing with an edict. III. Regarding the distinction between a censure that is immediately incurred (latæ sententiæ) and one that is incurred only after a judgment (ferendæ sententiæ), the doctors state that if the words include an action to be performed by another, it is a censure that must be imposed (ferendæ); otherwise, it is a censure that is immediately incurred (latæ). Thus, a censure is immediately incurred when it is stated by law, by the very fact, or without any further judgment; or if the words are in the past or present tense, e.g., "we excommunicate," "he is excommunicated," "they are excommunicated," "we command that he be excommunicated," etc. Conversely, a censure that must be imposed is indicated when the words are in the future tense, e.g., "he will be excommunicated," or when they contain a threat, e.g., "under pain of excommunication," "under the penalty of anathema" (unless the context of other words suggests the opposite); also, if it is said, "we wish to be excommunicated," or "let him be excommunicated," this must be understood when the bishop is commanded by law to impose excommunication; but when it is absolutely stated, "let

him be excommunicated," "let him be suspended," etc., it is understood to be a censure that is immediately incurred, as commonly stated by Bonacin, Silv., Suarez, Vasquez, etc. When it is said, "he is excommunicated," or "he is under anathema," Suarez and Tournely hold that it is a censure that is immediately incurred; but Sanchez and Laym. Dicast. hold that it is a censure that must be imposed, provided that it is not against an error of heresy; both opinions are probable. If it is said, "let him remain excommunicated," or "let him remain suspended," Nav. Silv. Henriq., etc., hold that no censure is incurred; but Sayrus, Bonac. Salm. Conc., etc., maintain that in such a case, the accused is given the option to choose which he prefers. 3. It is asked: 1. Who can declare censures? Answer: The Pope, bishops, and even their vicars, as correctly stated by Busemb., Fagn., Suar., Sanchez, Tourn., etc., contrary to Sayrus, etc. Vicars capitulars, provincial councils, regular prelates and their capitulars, and all others to whom this power has been granted. But not parish priests, and even less so laymen and women, even if they are abbesses; for they are not capable of ecclesiastical jurisdiction. Therefore, whoever can declare censures must at least be tonsured and have jurisdiction properly exercised; therefore, a bishop who is excommunicated, suspended, a heretic, or a schismatic cannot declare censures on anyone, according to canon 1 of the exceptions, nor can his vicar, according to canon 1 of the office of a vicar, 6. But an excommunicated or heretical person secretly can validly (although illicitly) declare censures, as commonly stated by Suar., Sot., Salm., etc.; indeed, Bonac., Dian., Avila, etc., say the same about a publicly excommunicated person, if he has not been formally denounced. It should be noted that a censure declared under coercion or by grave fear is valid, according to Suar., Bonac., Castr., Tourn., Salm., etc., contrary to others, just as an absolution obtained by unjust fear is invalid, according to canon 6 of the penitential. 4. It is asked: 2. What is required in order for someone to be subject to a censure? It is required that 1. he be baptized. 2. That he possess the use of reason; it should be noted (1) Lib. 7, n. 1, ad 6. — (3) N. 9 et 8. — (5) N. 8, in fin. — (4) N. 6a — (6) N. 5, 10 et 11. — (6) N. 12, et v. Requir. V. — (7) Ibid. Requir. VI.

[*Latin ed. p. 568*]

SECTION XIX. ON CENSURES AND IRREGULARITIES.

556. Minors are not subject to latae sententiae censures, unless expressly stated in the law, as is the case with boys who enter monasteries of nuns, according to Trid. Sess. 25, can. 5, or those who assault clerics, can. Pueris fin. de sent. excom. (1). To be subject, it must be clearly stated; hence, as stated previously in section 16, number 138, a bishop cannot impose latae sententiae censures on those who are peregrini (travelers), unless they have committed an offense after being warned. It should also be noted that bishops do not incur censures unless they are specifically named; cap.

Quia periculosum, concerning the sentence of excommunication, number 6; but this is commonly understood to refer to suspension and interdict, since only these are mentioned in the text (2). Kings and queens can only be censured by the Pope, as can also, commonly, doctors (3). 4. To be imposed upon a specific person; this applies only to excommunication, since the entire community is subject to suspension or interdict, but not to excommunication, as commonly stated by Castr., Bon., Salm., etc., with St. Thomas (4); indeed, no one can be excommunicated by way of a general sentence concerning a particular community, as stated by Ronc. and Salm., etc. However, if a certain offense is prohibited under the penalty of excommunication, it is certain that all who commit it incur that penalty (5). It should be noted that if the Pope were to find all members of a community guilty, he could certainly excommunicate them; but if a prelate were to do so, it would be unlawful; can. Romana, concerning the sentence of excommunication, number 6; but some, such as Avila, Ledesma, and Salm., etc., and Hostiens, Jo. Monac. Archid., and Franciscus Philippus Probus, Felin., with Ricc. and Rota (cited by Fagn. in c. Responso, concerning the sentence of excommunication, number 93), state that this would also be invalid, since in the cited chapter, the Roman commentary says: "We absolutely prohibit," as if it had said, "we take away the power to excommunicate in this way." And Fagn. himself, who adheres to the former opinion, says that the former should be followed because, since it is probable, it should be maintained as the safer option. Therefore, a bishop must excommunicate each guilty party by name (6). 5. A regular prelate can impose a censure upon his subjects, wherever they may be found. Suar., Avila, Tourn., Croix, Salm., etc., commun. But a bishop cannot impose a censure while residing outside his diocese, unless it is a matter of urgency. Quamvis, de foro comp. Except if the subject's contumacy is so manifest that it does not require a hearing, can. Manifesta, 2, q. 1. It is also excepted if the censure is imposed by way of a precept or statute, to avoid common offenses (7). Conversely, a bishop residing within his diocese can properly impose a censure upon a subject residing elsewhere, as commonly stated by Bon., Coninc., Tourn., Conc. Dian., Salm., etc., against Pontium, etc. And in such a case, a citation is sufficient if the person is cited either at home or in a public place within the bishop's territory by means of an edict, as stated by Trid. But this applies only to offenses committed within the bishop's territory, not to those committed outside of it, as stated by Suar., Bonac., Salm., etc. (against Sayr., etc.) from cap. 2, de const. in 6 (8). If a bishop has imposed a censure upon someone by means of a particular precept, e.g., if that person commits a certain crime, it is more probable that the person will incur the censure, even if they committed the offense outside the diocese, because the precept applies to the person, and therefore to their location; thus, wherever they are found, it applies, unlike a statute, which applies (1) Lib. 7, numbers 13 to 15. (2) Number 15. (3) Number 16. (4) Suppl., q. 22, art. 5, ad 2. (5) Lib.

7, number 15. (6) Number 19. (7) Numbers 20 and 21. (8) Number 23.

[*Latin ed. p. 569*]

OF THE EMANATION OF CENSURES. 557 Tourn. Roncaglia, Avil. Holzm., etc., whose opinion is also probable (1). 6. – The bishop can certainly impose a censure on a foreigner committing an offense within his diocese, according to the end of *De Foro comp.*: but it is always understood that the person must be contumacious, as stated in treatise 16, no. 138, at the end, and that the bishop must cite the accused before he leaves the bishop's territory (2). A foreigner, merely staying somewhere for a significant portion of the year, incurs a censure by way of a general statute for future crimes, e.g., against those who steal in a church; otherwise, if he stays there as a foreigner, or if the censure is by way of a particular precept, such as against those who do not reveal thieves: thus Suar., Silv., Sayr., Salm., etc. (3). 7. It is asked (3): what is required to incur a grave censure, such as a major excommunication, or suspension from all use, for a long time? It is required that (1) there be a grave sin, namely, one whose matter involves a grave fault (4). But in case of doubt about the gravity of the matter, the precept of the superior is binding, as rightly say Salm. and Cornejo (5). And when the precept is imposed under a censure of definite sentence, it is already binding under a grave censure, even if the matter itself was not grave, but was such as to greatly contribute to the intended end. Otherwise, if the matter itself was not grave, and the censure is of a sentence to be fulfilled; thus Sot., Avil., Ronc., Salm., etc. (6). 2. It is required that there be an external act that could be externally known by others; hence, if someone were to say, "it is so," intending thereby to confirm heresy, he does not incur excommunication, as the commentators say: Suar., Tourn., Con., Sayr., Salm. And it must also be a gravely external act, so that one is not excommunicated for lightly striking a cleric, even if he has the intention of killing him; thus the same authors (7). 3. It is required that the act of sin be consummated, unless the law expresses otherwise: thus also commonly Sanch., Suar., Castrop., Bonac., Salm., Bon., Busemb., etc. (8). But it is asked (1): does a censure imposed on those who command, or give counsel, to commit a crime, apply to them, when the crime has not been carried out? Answer: if the censure is primarily imposed on them, then it applies whenever the command or counsel has already been given by them. Otherwise, if the censure is imposed for a fault that is primarily forbidden, even though it arises from a command; therefore, one who commands the striking of a cleric is not excommunicated, if that striking does not occur; Bonac., Bus., Salm., Croix, etc., and likewise Nav., Salm., Croix, etc., excuse him who gave the command or counsel to one who was already prepared to commit the crime (9). It is asked (2): does one incur a censure if he doubts whether he has given his command or counsel? Salm. and others deny it, because

punishment is not incurred unless it is certain that there was a crime, and that the effect followed: but Sanch., Croix, Dicast., etc., affirm it, because in doubt, the fault is presumed. Both opinions are probable, according to what was said above, treatise 10, no. 45 (10). It is asked (3): does one incur a censure for giving counsel, if he revokes that counsel before it is carried out? Navar., Bonac., etc., affirm it, as does P. Concina, who otherwise taught the opposite concerning restitution, as we saw in the aforementioned treatise 10, no. 48, where we disagree with P. Concina; but here also we disagree with him, as do Suar., Castr., Laym., Avil., Salm., Viva, and others more commonly.

[*Latin ed. p. 570*]

558 TRACTATE XIX. ON CENSURES AND PENALTIES. Because the Church cannot impose censures unless the person is contumacious, up to the point of execution of the penalty (1), just as we shall say regarding irregularity, whether one incurs a censure for poisoning a cleric. 8. — It is required that 4. there be contumacy, which implies contempt for the censure, in order to incur a censure. And from this 1. it follows that knowledge of ecclesiastical law (and even if the offense is prohibited by divine law) is not sufficient to incur censures, but rather a greater knowledge of the censure itself is required; therefore, Suar., Cajetan, Castrop, Fill., Bonac., and others commonly say that ignorance excuses from a censure, not only antecedent ignorance, but also concomitant ignorance; concomitant ignorance would be if someone killed a cleric, unaware that he was a cleric, but with the intention of killing (2). Ignorance of a grave kind also excuses, when the censure is imposed on those who are hearing, or presuming, or deliberately, or rashly sinning; thus, Sanch., Escob., etc. Indeed, Bonac., Ronc., Sanch., Salmant., Silv., etc., (contrary to the opinion of Suar., Castrop, Tourn., Conc., and others, which is more common), maintain that even affected ignorance excuses; and truly, it is not unreasonable to say this, because in it (speaking strictly) there is not present formal malice, which induces true contempt for the censure (3). It follows 2. with great probability, along with Suar., Castrop, Bon., Salm., Conin., etc., that grave fear also excuses from a censure; even if the crime for which the censure is imposed is forbidden by divine law (provided that one does not sin out of contempt for the law: for fear excuses from human law, as if it were accepted by humans). It follows 3. that a censure, although it can be imposed for future crimes, as commonly and with great probability, Laym., Coninc., Abbas, Spor., Viva, etc., (against Tourn.), and as is already practiced to avoid such things; nevertheless, it cannot be imposed for past sins; and for those which do not have a subsequent effect, where there has not preceded a warning; because otherwise, there is no contumacy. However, this is understood only with regard to excommunication, while suspension and interdict can be imposed for past offenses as a pure penalty, as say Castr., Bon., Salm.,

Con., etc. (4). 4. It follows that a canonical warning is necessary; with an interval of six days, at least, unless there is a just cause to shorten the time. This is understood with regard to validity, because for the validity of a censure, it is sufficient that a warning has intervened; therefore, sometimes one is sufficient. It is also understood with regard to censures imposed by a judge through a particular sentence; for in the case of others issued by law, the same law applies as that which warns, as is more probably said by Bon., Sanch., Fill., Boss., Avila, (against Suar., Castr., Laym., and Salm.); and the same applies to censures imposed by a sentence, because in those, a warning is already present and there is contumacy; provided that the accused has been cited before the declaration of the censure, when the crime is not entirely notorious, as rightly point out Tol., Bon., and others (5). 9. — However, in order that a censure may be lawfully imposed, the judge must impose it in writing, noting therein distinctly the person, the censure, and the cause in particular, and exhibiting a copy of the censure, if he should request it. It is said that it is lawful, because if it is imposed after the formalities have been observed, the censure will be valid; but the judge will become guilty of a grave sin, and will be suspended from divine offices and from entering the church for a month, chapter 1, with the medicinal exception in 6. However, this is understood with regard to censures imposed by way of sentence, after prior citation and with the cause known; otherwise, in the case of others which are imposed by natural law, or even by a particular precept, by threatening someone, v.g., if someone does such a thing.

(1) Lib. 7. n. 4o.

(2) N. 45.

(3) N. 48.

(4) N. 55. et nov.

(5) N. 55. et 56.

[*Latin ed. p. 571*]

ON REMOVAL FROM CENSURES. 359. Furthermore, those judges are not included in this [exemption] who, due to an urgent cause, and without the possibility of delay, omit the aforementioned formalities, or if they do so out of ignorance, albeit culpable; as the text states: "If anyone be rash, rashness presupposes knowledge" (1). Moreover, the sentence of censure is not to be carried out on a feast day, unless the contumacy is so evident that the cause does not require examination, chapter on Evidence, concerning accusations (2).

10. It must be noted that if someone is truly innocent, but has been justly censured based on evidence, then, although he may not be bound in his conscience by the censure, nor become irregular in administering the sacraments, he must nevertheless conduct himself externally as if censured, in

order to avoid scandal; so teach Suarez, Castrop, Coninch, and Salmanticenses, and Croix. The same applies when a censure has been imposed, and there is doubt about its justice, or about the removal from it, because then the judge retains the power, and the accused must behave as if censured, as taught by Castrop, Croix, Suarez, and Salmanticenses.

8. Conversely, when there is doubt whether or not a censure has been incurred, or there is doubt about the fact itself, e.g., whether a blow was given that was seriously injurious to a cleric; or about the law, e.g., whether the censure is lata or to be carried out; so teach, in common, Sanch, Bonac, Holzm, Ronc, and Salmanticenses, following St. Thomas (4). But if a judge were to decree, for example, a certain solution under the penalty of censure, then, even if the accused has a probable opinion that he is not bound, he is nevertheless bound within the time prescribed by the judge (or extended by the creditor, who, otherwise, according to what is taught by Suarez, Castrop, Tourn, Coninc, etc. (5), can always extend the term). But if afterwards it becomes certain of his innocence, then he is not bound either to the solution, nor to observe the censure, as say Avila and Salmanticenses; he would nevertheless sin (as stated above) publicly, if he did not comply with the censure, by causing scandal (6).

POINT II. ON REMOVAL FROM CENSURES.

11. Who can absolve from censures?

12. Concerning censures imposed by a general decree. Can a bishop existing outside [his diocese], etc.? Notable points.

13. Is a formula required, and is the presence of the censured required, etc.? Concerning conditional absolution, and whether it can be granted outside of confession, etc.

14. Concerning the requirements for absolution.

11. If a censure is imposed as a particular sentence, then, generally, only he who imposed it, or his superior, or his successor, or a delegate, can remove it. But if it is imposed by common law, then any confessor can remove it, as taught in common by Tourn, Sot, Coninc, Castrop, Conc, Ronc, and Salmanticenses, following St. Thomas (7). This is derived from chapter Nuper, 39, concerning excommunication not reserved (and the same is understood by the doctors concerning suspension and personal interdict, Castrop, Sot, Vasq, and Salmanticenses, following St. Thomas). There, it is said that one can obtain the benefit of absolution from his bishop, or from his own priest. Under the term "his own priest" is understood any approved confessor, according to the common opinion (8), and as shown in treatise 16, numbers 86 and 96, at the end. It is said "approved," because even simple priests cannot absolve from a lesser excommunication, whatever some may say (9). But many things must be noted here.

(1) Book 7, numbers 59 to 61.
(4) Number 66.
(3) Number 66.
(4) Number 67.
(5) Number 64.
(6) Number 68.
(7) Supplement, question 24, article 1.
(8) Book 7, numbers 59 and 70.
(9) Numbers 71 and 72.

[*Latin ed. p. 572*]

SECTION XIX. CONCERNING CENSURES AND IRREGULARITIES. 12.—It should be noted that this kind of absolution is valid both for the internal and external forum; therefore, Roncatius, Concinius, Castropus, Suarius, Sporus, Salmerius, etc., state that absolution can also be given outside of confession (1). It should be noted that any confessor can likewise absolve from all censures imposed by a person through a sentence, not merely a particular one, but a general one: because these are equivalent to censures imposed by law, as Castropus, Roncatius, Laymannus, Concilii Salmantinus, Holzmarius, Concinius, Bonacius, Croix, etc., most commonly state against Suarius and Fillius (2). It should be noted that a bishop, even if he is outside his diocese, can absolve a subject from censures, provided that knowledge of the cause is not required; Silvaticus, Salmantius, Avilanus, etc. state this. However, it is different if someone commits an offense outside the diocese and is excommunicated by sentence by the bishop of that place; then he cannot be absolved by his own bishop unless with the bishop's permission; Concinius, Turrianus, Diana Veteranorum, Salmerius, etc. (3). It should be noted that he who has the power to absolve from papal censures does not therefore have the power to absolve from censures imposed by a papal bull; Bonacius, Diana Veteranorum, Bussensis (4). Likewise, he who can absolve from censures imposed by a bull of the Holy Eucharist, does not therefore have the power to absolve from heresy, as Benedict XIV declared in the bull *Convocatis* (5); likewise, the power granted by a bishop for reserved matters is not understood to include those to which a reserved censure is attached, as Tamburinus states. However, if the concession is made by the Pope, since papal censures are usually reserved with a censure and because of the censure; La Croix, etc. And likewise, the power granted during a jubilee to absolve from all reserved censures, is understood, by common usage, also to be reserved by bishops (6). 13. It should be noted that to absolve from a censure in the internal forum, a specific verbal formula is not required, but any external sign suffices (provided that the will alone is not sufficient), as Suarius, Castropus, Salmerius, etc. state (7). The presence of the censured

is not required, because certainly he can be absolved even if absent, as is stated in chapter 2 of the first question of the *de manifest.*. However, Sanchius, Salmerius, etc., note that this should not be done unless for a pressing reason; and if absolution is obtained through a procurator, he must have a special mandate from the censured to obtain absolution. He can also be absolved unwillingly, but generally this is not permitted (8). It should be noted that an absolution obtained through grave and unjust fear is invalid, and the fear causing it is attached to a new excommunication, c. un. *de His quæ vi, etc.* (9). It should be noted that an absolution given without fulfilling the required penance, if granted by the ordinary, is valid, although certainly illicit, as was said in section 16, note 71. But if it is given by a delegate, as Suarius, Sporus, Vasquez, etc., most probably state, it is also invalid if the delegation contains a clause requiring the fulfillment of the penance; although the opposite opinion, held by Sanchius, Castropus, Bonacius, Roncatius, Salmerius, etc., is also probable, whenever the clause invalidating the absolution is not expressed in the concession (10). It should be noted that a conditional absolution for the future is valid, but illicit if there is a just reason; Suarius, Concinius, Salmerius, Roncatius, etc. state this; and then, when the condition is fulfilled, the censure is removed (11). On the contrary, an absolution is licitly given with a condition of recurrence, namely, that if the absolved person does not fulfill his obligation within the prescribed time, he will incur the same censure again. But then, according to the more probable opinion of Laymannus, Concinius, Castropus, Roncatius, Tournus, Salmerius, etc., against Suarius, Bonacius, etc., a new fault is required (1).

(1) Lib. 7, n. 70, at the end.

(2) N. 72.

(3) Ibid., ad I, and note II.

(4) N. 110.

(5) N. 113.

(6) N. 113.

(7) N. 116.

(8) N. 117.

(9) N. 119.

(10) N. 120 and 121.

(11) N. 125.

[*Latin ed. p. 573*]

OF THE MAJOR EXCOMMUNICATION. 561. Once imposed, this censure cannot be revived if it has been removed, for censures cannot be suspended without the authority of the pontiff. And Laym, Conin, Salm., etc., hold the same. This is to be understood even when the Pope grants absolution in all respects, even if there is a possibility of recurrence (1). Note

9. It is probable, according to Sanch., Coninc., Salmant., Ugolin., Busemb., etc., against Suar. and Navar., that he who has the power to absolve from censures in the forum of conscience, can also absolve outside of confession (2). However, cases of papal excommunication that are secret, and which bishops cannot absolve except in confession, are to be excepted, according to the declaration of Gregory XIII, as will be said below in chapter 20, number 32, 14. Finally, the requirements for absolution must be noted. These are: I. Prior satisfaction to the offended party, unless that party has remitted the offense, or has unjustly refused just satisfaction, or unless the guilty party is unable to satisfy; and if, at that time, he cannot satisfy without serious inconvenience, he should provide a guarantee if he can, or at least make an oath to satisfy, chapter Odoardus, on solutions, and chapter 23, on verbal signs, provided that the creditor does not suffer the same inconvenience; Navar., Coninc., Salmant., etc. (3). II. An oath not to repeat the same offense, chapter De cætero, and chapter Ex tenore, on sentences of excommunication. But this is understood when the offense is enormous, such as the striking of a cleric, or the public practice of usury; thus, generally, Suar., Castr., Coninc., etc. (4). III. A petition for absolution, chapter Per tuas, on sentences of excommunication. Although St. Thomas (5) says, and those who follow him, Castr., Coninc., Salm., etc., that if the guilty party has already been reformed, the confessor can absolve him, even unwillingly, because the privilege is granted to the confessor, not to the penitent, since the text does not say "he cannot," but only "he should not." If, however, the penitent, in the case that he confesses to one who has the power, forgets to accuse himself of a reserved matter, is he absolved from it? The most common opinion is affirmative; nevertheless, the opposite seems more probable to me, as we said in chapter 16, number 140 (6). If absolution has been granted for a false reason, then it must be considered whether such a reason is principal, because if it is principal, it is invalid, provided that the judge was not certainly aware of the falsehood: thus, generally, Suar., Bonac., Tourn., Castrop., Sayr., Salmant., Avila, etc. (7). CHAPTER II. OF SPECIFIC CENSURES. PARAGRAPH I. OF THE MAJOR EXCOMMUNICATION. 15. On communication with tolerated and avoided persons. — 16. With those who strike clerics. — 17. On the effects of the major excommunication. I. Deprivation of the passive use of the sacraments. — 18. II. On suffrage, etc., and whether one can pray, etc. III. On the active use of the sacraments. IV. On the use of divine offices, sacramentals, etc. — 19. V. On benefices, dignities, and pensions. — 20. VI. On communication in the forum. VII. On jurisdiction. VIII. On burial. IX. On civil communication (which will be discussed in the following paragraph). 15. — EXCOMMUNICATION, generally speaking, is defined as: a censure by which one is deprived of communion with the Church. But here, a distinction must be made between minor and major excommunication: minor excommunication (of which we will speak in paragraph II) deprives only

of the passive communion, or the reception of the sacraments.

(1) Book 7, number 158.

(2) Number 126.

(3) Numbers 157 and 128.

(4) Number 189.

(5) Supplement, question 26, article 2.

(6) Book 7, numbers 130 and 131.

(7) Number 132.

[*Latin ed. p. 574*]

562 TRACTATE XIX. ON CENSURES AND IRREGULARITIES. The major censure, which is the subject of this discussion, and which is understood when the term "excommunication" is used absolutely, also inflicts a private penalty, and all forms of communion, both spiritual and temporal. Those who are excommunicated by the major censure are sometimes called "tolerated," and sometimes are to be avoided; however, it should be known that in ancient times, all excommunicated persons were to be avoided, but the Council of Constance declared that only those who are excommunicated, denounced, and publicly assault clerics or religious are to be avoided, and not others (1). Therefore, there is no obligation to avoid excommunicated persons, even notorious ones, unless they are heretics, unless they have been specifically excommunicated, with their names and circumstances explicitly stated, and furthermore, unless they have been publicly denounced, that is, declared excommunicated in a public place, or in writing, or by word of mouth. But it should be noted that the Council declared that it intended by this rule to benefit only the good faithful, and not the excommunicated; therefore, those who are excommunicated always sin when they communicate with others, both in spiritual and civil matters. However, others do not sin when they communicate with those who are tolerated, even in spiritual matters. And although some say that it is a sin to communicate with tolerated persons without a reason, at least because (as some say) it may lead the excommunicated person to commit an illicit act; others, however, more commonly, along with Sanchez, Bonaventure, Castropal, Soto, Sayr, Cornejo, Hurtado, Salmant, etc., and with good reason, say that it is permissible to communicate with them without distinction; because when a person is tolerated, they are required by the faithful to communicate, for example, to administer the sacraments to them, and in that case, they do not sin: for if they did sin, they would be useless, or at least the general permission given to the faithful to communicate with them would be invalid, unless that communication was forbidden to others, at least indirectly, for the sake of charity. Therefore, when the Council grants the faithful the universal ability to communicate with tolerated persons, it indirectly grants tolerated persons the ability to communicate with others,

when they are required to do so (2). And what is said about excommunicated persons, the same is said by the common doctors about those who are suspended, and those who are interdicted, but not to be avoided, since the Council speaks of all censures. And Avila also says the same about irregular persons, who, if they have not been denounced, are not to be avoided (3). 16. — In order for those who assault clerics to be avoided, they must be public and notorious, so that, according to the Council of Constance, "the sentence has been so clearly established by canon law that the fact is so well known that it cannot be concealed by any evasion, nor excused by any pretext" (4). Therefore, notoriety of the act is required, that is, that the assault is known to a majority of the region or neighborhood, or to the monastery where the act occurred, or to a large number of people if the region is large; otherwise, as Castrop, Bonaventure, Salmant, Sayr, etc., say, common fame is sufficient, which has arisen from credible persons; provided that (as Viva, Avila, and Dicastillus point out), the fame is not merely of an assault, but of a publicly committed assault. Therefore, when the crime is hidden, one is not bound to avoid the assailant who knows of it privately. It is asked whether, in addition to the notoriety of the act, the notoriety of the law is also required. And it is probable that it is required, according to Pignatelli, Covarrubias, Avila, Roncaglia, Salmant, Viva, etc., since the Council says that in order to avoid an assailant, it is necessary to have certainty not only that he assaulted a cleric, but also that he incurred excommunication, so that "the fact cannot be concealed by any evasion," and "nor excused by any pretext." Therefore (1) Book 7, paragraphs 155 and 155. — (2) Paragraph 159. — (3) Paragraph 140. — (4) Paragraph 155.

[*Latin ed. p. 575*]

OF THE MAJOR EXCOMMUNICATION. 563. When the accused has not confessed in court, or has not been condemned, or at least the crime has not been proven, it rarely happens that he is to be avoided; because, generally speaking, he can almost always defend himself by claiming that he did not incur the censure, for example, that he struck first in self-defense, or that he was not at the time in a state of grace, etc.; so that he can, with some justification, be excused (1). However, if someone is a public aggressor, or has been denounced as excommunicated elsewhere, he is not to be avoided elsewhere, where he is hidden (provided that the news has not yet reached there), as Castrop, Sanch., and Salm. argue against others; because, indeed, a public act in one region is not a scandal in another where it is not known, which is what the Council especially wanted to avoid (2). 17. The effects of the major excommunication are some remote and some proximate. The remote effects are two: 1. Irregularity, which is incurred by the excommunicated person if he exercises an act of the sacred order; 2. It is the fact that if the excommunicated person persists in excommunication, or in another censure, for a year, he becomes suspected of heresy, and as

such he must be deprived of benefices; thus, the doctors commonly teach from the Council of Trent, session 25, chapter 3 (3). The proximate effects, however, are nine, and I. The excommunication deprives one of the passive use of the sacraments, namely, the power to receive the sacraments: unless there is a grave fear of damage, and unless it is done in contempt of the censure, as Bon., Laym., Fill., Salmant., etc., commonly say (4). The most common opinion, and the truer one, is that of Cajet., Castr., Bon., Coninch., Salm., Croix, etc., against some, that it is validly possible to receive the sacraments before being absolved from the censure, provided that all the requirements are met (5). It should be noted that the minister administering the sacrament to a tolerated person would sin against divine law by administering the sacrament to an unworthy person, but not against the precept of the Church, as stated in number 15, since it is permissible to communicate with tolerated persons even in divine matters. From this, it is probably inferred that it is permissible to administer the sacrament to an excommunicated person, if that person is in good faith. Also, Suar., Navar., Castrop., Bon., Salm., Croix, Coninch., etc., say that if there is doubt whether or not a person has been absolved from excommunication, the sacrament may be administered to him if he requests it; especially if he affirms that he has been absolved, because in doubt, no one is presumed to be lying (6). 18. II. One is deprived of the ability to gain indulgences, and of participation in the public prayers and suffrages of the Church, but not of private ones: hence, one can pray privately for the excommunicated person, even by a priest at Mass, provided that the priest prays not as a minister of the Church, but as a private person; so say St. Thomas and others commonly (7). It is asked whether it is possible to pray in the name of the Church for tolerated persons? Bell. and Suar., etc., deny it, but Navar., Castr., Salm., Conc., etc., affirm it, from the concession made by the Council of Constance, that one can communicate indiscriminately with tolerated persons. Both opinions are probable (8). On the contrary, I do not think it probable that some believe that it is possible to pray publicly for those who are in the state of grace, since they are not prevented from being absolved (9). III. One is deprived of the active use of the sacraments, or of their administration. This refers to the lawful administration; for it is certain that an excommunicated person can validly administer the sacraments, and can assist at marriage, as we said in part 18, number 71, except for the sacrament of penance, because an excommunicated person is to be avoided from all jurisdiction.

(1) Lib. 7. n. 141 ad 124.

(2) N. 145.

(3) N. 157.

(4) N. 158.

(5) Ibid. 2. I said, and n. 159.

(6) N. 160.
(7) N. 162.
(8) N. 164.
(9) N. 165.

[*Latin ed. p. 576*]

564. TRACTATE XIX. ON CENSURES AND IRREGULARITIES.

The one who is latae sententiae is deprived of ecclesiastical functions, cap. All concerning penance and absolution. And this also holds true in death, as we said in Tractate 16, no. 92. I say "vitandus" should be avoided, because the one who is "vitandus" is not deprived of jurisdiction; Salmant, Croix, and others generally agree (1). However, regarding a licit administration, the one who is "vitandus," when legitimately requested, may licitly administer the sacraments. Therefore, Castres plausibly states that, on a festive day, if there is no other priest available, the one who is "vitandus" may celebrate, provided that there is no scandal, since it is presumed that the people, in good conscience, would request Mass from him at that time (2). The one who is excommunicated against whom the sacraments are illicitly administered is irregular, c. ult. de cler. excom. The same applies if he blesses marriages or baptizes solemnly; otherwise, if it is done privately. There is doubt among the doctors as to whether the one who is "vitandus," when administering penance, becomes irregular? Some deny it; but we affirm it, with the common opinion; from the canon, Si quis, caus. 11, q. 3 (3). Similarly, a priest who is excommunicated is irregular if he causes another to celebrate before him, from cap. Tanta, de excess. præl. (4). The one who receives the sacrament from a "vitandus" sins gravely and incurs a lesser excommunication; and the one who receives ordination also incurs suspension from the order received, c. Cum illorum, § fin. de sent. excomm. IV. The excommunicated person, being deprived of the use of the divine offices, and therefore excommunicated, is not only deprived of the fruits of those offices, but cannot even participate in them without committing a grave sin; and St. Thomas says (5) that if he has begun a sacred rite, and has not yet consecrated, he is bound to abandon it; unless he is excused by the necessity of avoiding scandal, or by some other just cause, as Suarez, Bonaventure, etc., add (6). However, it is not forbidden for the excommunicated person to use the sacramentals, not so that he may derive benefit from them, but so that he may venerate them. He may also enter the church for some just cause while the divine offices are being recited, for example, to escape the grasp of a hand; and then he may, privately, pray, as is plausibly stated by Cajetan, Paludanus, Turrecremata, Concinius, Salmeron, and Bonaventure (7). However, the excommunicated person, if he were to attend the sacred rites or other public functions, would un-

doubtedly sin gravely, and if warned, he refuses to leave, he incurs a papal excommunication, cap. Eos, de sent. exc. The same applies to the interdict, and to all those who prevent the excommunicated or interdicted person from leaving: Castres, Bonaventure, and Salmeron, and cap. Gravis, eod tit. (8). It should also be noted that if the excommunicated person is bound by the canonical hours, even by virtue of the benefit of the office, and because of his excommunication he cannot claim the fruits, he is not excused from them, because this happens through his own fault; Suarez, Castres, Navar, Laym, Croix, and Salmeron, who note, along with Avila and Covarrubias, that if he is completely deprived of the benefit, then he is not bound by the canonical hours; and the excommunicated person, when reciting the office, cannot say, "Dominus vobiscum," but must say, "Domine, exaudi orationem meam," otherwise he would sin, albeit venially, as is commonly held by Bonaventure, Salmeron, Tournhem, Gonet, Cornejo, etc. Indeed, Avila and Navar argue that he is excused from all guilt if he recites it without a companion (9). 19. - V. The collation and election of an excommunicated person to benefices irritates, cap. Postulastis, de cler. excom. min. And here it should be noted that 1. not only does the one who receives a benefice sin gravely, but also the one who confers it upon him; and in this case, besides the lesser excommunication, he incurs a suspension - (1) Lib. 7, no. 165 to 168. - (2) No. 169. - (3) No. 171. - (4) No. 175, in fin. - (5) 3. p. q. 83, no. 6, ad 2. - (6) Lib. 7, no. 173. - (7) No. 174. - (8) No. 175. - (9) No. 175.

[*Latin ed. p. 577*]

OF THE MAJOR EXCOMMUNICATION. 565 pension, from the aforementioned chapter, note 2. It must be understood that the person elected to a benefice was already excommunicated at the time of presentation or election; otherwise, he validly accepts the benefice and its possession, even if, at the time of acceptance, he is found to be excommunicated, because acceptance and possession are not acts of jurisdiction; thus, Castrop, Bonacin, Covar, Salm. (contrary to Suar.). Conversely, a collation made to an excommunicated person is invalid, even if, at the time of acceptance, he is found to have been absolved by a common sentence; therefore, a new collation is required at that time, or at least (as Less, Navar, Salmant, etc., say), the collator must persevere in his original intention. Note 3. An excommunicated person is bound to restore all fruits received from a benefice, even if he is subsequently absolved, and again obtains the same benefice which he previously received in bad faith. However, if he has already fulfilled the obligations attached to that office, either by himself or through others, Coninch, Salmant, Bonacin, etc., hold that he may retain the fruits received as if they were vacant, and due to the successor in the benefice; but this is understood in places where the law of spoliation is not in force. Note 4. That which has been said concerning a benefice also applies to ecclesiastical

dignities, bishoprics, priories, and the like; Suar, Castrop, Bonacin, and Salmant. As for whether the same applies to secular dignities, Bon, Salm, etc., affirm; but Castr, Filliuc, Henriq, and Coninch, probably deny it, because, indeed, there is no law by which ecclesiastical pensions granted for some ecclesiastical office, e.g., to a vicar or coadjutor bishop, are declared invalid; Suar, Castrop, Salm, commonly (1). Note 5. Not only those who are condemned, but also those who are tolerated, are incapable of holding benefices, dignities, and pensions, as correctly stated by Suar, Tourn, Aver, Cast, Con, Salm, etc., contrary to Nav, Less, Gib, Hurt, etc.; while it is true that the Council of Constance granted permission to communicate with tolerated excommunicates; but the excommunicated themselves are always incapable, because they cannot, by their own actions, fulfill their office. I would except only the case if that office were to be exercised for the benefit of the collator; therefore, Salmant rightly observes that the suspension imposed was removed by the very Council, as cited in the aforementioned chapter, Postulastis, concerning the conferring of a benefice upon a tolerated person (2). Note 6. A collation made to an excommunicated person is invalid, even if he was unaware of the excommunication that bound him, or if he believed that he had already been absolved; Sanchez, Less, Suar, etc.; but Cabass, Fab, Salmant, etc., probably hold that a collation made to an excommunicated person by a superior, with absolution for the sake of caution, is valid for the purpose of the present collation (3). Finally, it should be noted that a person who was excommunicated after the collation is not bound to restore the fruits of the benefice before a judge's sentence, provided that he himself, or others, have fulfilled the obligations; thus, Sanchez, Tourn, Laym, Bonac, Castrop, Coninch, Salm, Av, etc., are more probable, contrary to Suar, Concin, etc., from the general principle that penalties which require some action always require a sentence, at least a declaratory one; see the statements in part 2, no. 25, and those to be made in Appendix 3, on Examinations, etc., no. 64. Conversely, it is certain that after a sentence, he is bound to restore the fruits until he is absolved; unless he is suffering from poverty and has applied them to himself; in this case, it may only benefit him if he is not prevented from being absolved; Laym, Sylvest, Castropal, Salmant, Av, etc. (1) Lib. 7, no. 180. — (2) No. 121. — (3) Nos. 182 and 183.

[*Latin ed. p. 578*]

566 TRACTATE XIX, CONCERNING CENSURES AND IRREGULARITIES. 20.—VI. Private communication in legal matters. Why an excommunicated person cannot be a judge, clerk, witness, lawyer, or executor, nor can he act in court; and although he may be tolerated, he can still be rejected, chapter "Pia," on sentences of excommunication, paragraph 6. Furthermore, he can always be avoided, and even brought to justice. Indeed, as Avila, Castrop, and Salamanca say, a tolerated person can even

defend others. The sentence of a judge who is to be avoided is not only illicit, but also invalid. However, the testimony of a person to be avoided is not invalid, but can be rejected. An excommunicated person cannot be a guardian, nor a curator, nor an executor of a will (if he is rejected), nor can he legally enter into contracts, nor can he make a will, although the contracts and the will may be valid (1). VII. In private jurisdiction: why an excommunicated person (understand, a person to be avoided) cannot neither pronounce a sentence, nor deliver a judgment, nor make a presentation, or an election to benefices; because these are entirely invalid. I say "to be avoided," because tolerated acts are valid, but illicit, unless necessity excuses them (2). VIII. Private ecclesiastical burial, so that the bodies of excommunicated persons should be removed from burial places (whenever they can certainly be distinguished); and if a body of a person to be avoided (not, however, a tolerated person, even if a heretic, but one who has not been formally denounced) is buried, the funeral cannot be celebrated unless the Church is first reconciled, according to "Sacris," on burials. If an excommunicated person who was not tolerated died with signs of penance, his body should be absolved from the censure, and burial should then be permitted; Castrop, Salamanca, and Cornejo. He who buries an excommunicated person incurs a greater excommunication, according to element 1 of "De Sepult." Those, however, who attend the funeral, or sing prayers, and probably even those who take care of the burial, as Cajetan, Bonaventure, Avila, Salamanca, etc., say, sin grievously, but do not incur a censure (3). Finally, excommunication also involves private civil communication with the faithful, but we will speak of this in the following section. SECTION II. ON MINOR EXCOMMUNICATION AND ITS EFFECTS. 21. The acts by which one incurs minor excommunication are: I. Speaking. II. Praying. III. Greeting. IV. Communion. V. Table fellowship. — 22. What sin is it to communicate with a person to be avoided? I. When is it grave? — 23. For what reasons can one communicate with a person to be avoided? I. For the sake of utility. II. For marriage. — 24. III. For subjection. — 25. IV. For ignorance. — 26. V. For necessity. — 27. Concerning the effects of minor excommunication; and whether it prohibits the administration of sacraments, and the reception of benefices. 21.—MINOR excommunication is incurred for a single reason, namely, for communicating with an excommunicated person to be avoided in the acts included in the following verse, as already stated in canon "Excommunicato," question 3, paragraph 1. 1. Speaking; 2. Praying; 3. Greeting; 4. Communion; 5. Table fellowship are denied. I. Speaking: this means any conversation, or communication by letter, and any other sign of goodwill, such as giving or receiving gifts, etc., as the doctors say (4). II. Praying: this means any communication in divine matters, such as assisting at public functions of Mass, processions, blessings, canonical hours, etc. Therefore, clerics in this case, when celebrating divine services, or public functions, are obliged to reject him, if they can;

but if they cannot, they must cease (1) Book 7, number 184. — (2) Number 185. — (3) Number 186. — (4) Number 189.

[*Latin ed. p. 579*]

OF THE LESSER EXCOMMUNICATION, ETC. 567 divine laws; and a priest should interrupt the Mass, unless he has begun the canon; but if he has begun it, it is probable that he may proceed, as Suar., Henriq., and Busemb. say; although he might interrupt the Mass, as Bon. and Cornejo wish. But if he has already consecrated, it is certain that the priest must continue the Mass, but only up to the Communion. Otherwise, those mentioned incur a lesser excommunication, and sin gravely (1). However, to recite the Office privately with an excommunicated person, avoiding him, is, according to probable opinion, excused by Suar., Bon., Coninch., Busemb., Salm., etc. As for whether secular individuals who are present at a Mass to which an excommunicated person is present sin gravely, Bonac., Salmant., Avila, and Dian. affirm this, and excuse them only for the smallness of the matter, if, for example, their attendance was only up to the Gospel; but Suarez, Castropal., Salm., Filliuc., Sayr., Henriq., etc., excuse them universally, saying that such communication is remote and accidental, provided that they are not the cause of the excommunicated person being there. Nevertheless, no one excuses them from a venial sin, and from the lesser excommunication (2). On the contrary, Bonac., Fill., Henriq., Suar., Coninc., etc., commonly excuse him who prays in the church in a separate place, or who otherwise assists at a sacred function from one to whom an excommunicated person is present (3). III. Greeting: This means any greeting or sign of honor; but commonly, St. Anton., Navar., Maj., Fill., Sot., Avila, Sayr., Bonacin., Castr., Salmant., Escob., etc., hold it to be probable that it is permissible to show certain signs of urbanity towards an excommunicated person; because such acts are not given to show him honor, but to avoid a sign of rudeness and contempt; especially if the excommunicated person is a superior, or a public person, such as a bishop, magistrate, etc. (4). Whether it is permissible to respond or greet an excommunicated person, Fill., Henriq., Busemb., Castrop., etc., affirm, because these acts (as they say) are rather a solution of obligations than a sign of honor; but at least as far as responding is concerned, Avila, Bonac., Holzm., and Salm. seem more likely to deny it, because these acts of courtesy are no longer due to an excommunicated person as a penalty for his crime. I said at least as far as responding is concerned, because as far as greeting is concerned, I would not dare to condemn the opposite as improbable, since that greeting does not seem to be a proper act of honor, and the denial of it seems to be an act of rudeness and contempt: but responding seems to be true communication (5). IV. Communion includes all contract, society, and cohabitation; but cohabitation is understood in the manner of society; because to sleep under the same roof, and even in the same bed, only for the purpose of resting, is

not true communion, nor is it forbidden, as probably say Suarez, Bonacina, Castr., and Salmant. (6). V. Table: It is understood that if a person invited to a meal enters the house of an excommunicated person, it is permissible for him to lie down in a separate room: Suarez, Bona., Salm.; on the other hand, if, by chance, in a lodging, house, or journey, a person were to lie down with an excommunicated person, even at the same table, as probably say Suar., Laym., Sayr., Spor., Castr., Holzm., etc. (7). 22.—It is asked: 1. What sin is committed, and what excommunication is incurred, by one who communes with an excommunicated person? It is answered that, generally speaking, as far as sin is concerned, he sins only venially. But it should be noted that a venial sin is sufficient to incur a lesser excommunication; but when the venial sin is not fully deliberate—(1) Lib. 7. n. 176 et 177. — (2) N. 173 et 176. — (3) Ibid. et 176. in fine. — (4) N. 193. — (5) N. 193. — (6) N. 194. — (7) N. 196.

[*Latin ed. p. 580*]

SECTION XIX. CONCERNING CENSURES AND IRREGULARITIES.

It is established that, in such cases, the censure is not incurred; for no penalty is incurred for acts which are not perfect in their kind (1). Furthermore, it should be noted that although a venial sin may be omitted in confession, that which is the cause of an excommunication cannot be omitted, because, with excommunication, the sacrament cannot be received (2). However, there are three cases in which communicating with an excommunicated person constitutes a grave sin, as St. Thomas states (3), namely:

1. If the communication is made in contempt of the Church's prohibition.

2. If the communication is made in the sacred things, in a grave matter, as we have said in n. 21, ad verbum II. "Orare."

3. If the communication is made in a criminal act; that is, if the communication is made with an excommunicated person for the same crime for which he was excommunicated; therefore, the concubine sins gravely who again has relations with the one who was excommunicated for concubinage; or who gives counsel or favor to him, so that he does not separate himself from her; thus, Bonacin, Suar, Salm., etc., state in cap. "Nuper, de sent. excomm."

Whether one sins gravely who communicates frequently with an excommunicated person in civil matters is a question. Navar, Castrop, Sayr, and Avila probably deny this, because communication in civil matters is only a venial sin, and venial sins, however numerous, do not constitute a mortal sin. However, Suar, Bonac, Holzm, Fill, Coninc, Spor, and Salm, etc., more probably affirm this, because even frequent communication in civil matters is not to be considered a light matter, since it is said in cap. 7, de Except., that he who communicates in civil matters with an excommunicated person,

communicates his own soul in danger. However, these authors, along with Tournely, observe that to sin gravely in this matter, it is not enough that someone frequently, even for a long time, communicates with an excommunicated person; but it is also necessary that he have the virtual intention of communicating with him more often (4).

Thus, concerning excommunication, generally speaking, he who communicates with one avoiding it incurs only a lesser excommunication. But in three cases, he incurs a greater excommunication:

1. If a cleric knowingly communicates in the sacred things with an excommunicated person specifically denounced by the Pope, cap. "Significavit excomm."

2. When excommunication is imposed on someone, and simultaneously on those who participate, because then, he who communicates with that person after being warned, incurs a greater excommunication; St. Thomas, Castropal, Salm, Avila, etc., state this in common.

3. If the communication is made in a criminal act, as explained above, and in such cases, he cannot be absolved unless by the one from whom absolution is to be received principally (5).

23. — Question 2: For what reasons is it permissible to communicate in civil matters with one avoiding excommunication? Answer: For five reasons contained in the following verses: 1. Utility; 2. Law; 3. Humility; 4. Ignorance; 5. Necessity.

And I. Utility: This refers to the utility either of the excommunicated person himself, so that he may reflect, or so that another may receive some spiritual benefit (for which reason it is permissible to preface other words or signs of benevolence, and therefore it is certainly permissible to preach to him in his presence); or the utility of others, so that they may receive some useful spiritual or temporal benefit from the excommunicated person; therefore, it is permissible to hear a sermon from him, or to seek his counsel (if no other suitable person is available); or to receive alms, or medicine; and thus also to continue a previously established relationship with him, but not to establish new relationships with him; Suar, Castropalaus, Avila, Bonacina, Salmanticenses, Concina, etc. (6).

II. Law: This refers to the matrimonial law, for which reason spouses (but not

[*Latin ed. p. 581*]

OF THE LESSER EXCOMMUNICATION, ETC. 569 spouses) may communicate with each other, insofar as it pertains to asking for or giving what is due, according to St. Thomas and others, commonly, from chapter 31 of the Decretals concerning excommunications. Among other things, it is noted that it is not permissible to communicate with a spouse who is excommunicated if a divorce has been consummated, or if the excommunication

is imposed for heresy, or because of doubt concerning the validity of the marriage; thus, the common doctors (1). Furthermore, it is not permissible to communicate in the sacred rites, as Innocent III declared in chapter 31 of the cited text, quoting Gregory VII in chapter "Quoniam," question 11, where it was decreed that wives, children, and servants may communicate in those things in which they were accustomed to communicate, but this is to be understood only insofar as it is necessary to render the due obedience; but to communicate in the sacred rites is not due obedience; thus, rightly Cajetan, Bona, Arminius, and Contini, against Sanchez and Salm (2). It is doubted whether a spouse who knowingly marries an excommunicated person can afterwards communicate? Castresan, Tournhem, and Salm, with St. Thomas (3), deny this probably, from the aforementioned chapter 31 of the Decretals concerning excommunications, where it is said that those who are subject may communicate with an excommunicated person in the same way as before: therefore, they cannot, if the subjection is incurred after the excommunication. The text of Innocent does not contradict this; for Innocent only answered what was asked of him, namely, whether they were obligated to communicate, or whether they merely could, if they wished; the pontiff answered that they were obligated, just as they were obligated before the excommunication; but he said nothing about those who entered into service at the time of the excommunication. But the text of Gregory is applicable to these, who grants communication to subjects because of their due subjection; therefore, it makes no difference whether this subjection was entered into before or after the excommunication (4). 24. - III. Humile: This refers to the due obedience of children, even emancipated ones, as probably stated by Suarez, Bona, Castresan, Salm, etc., against Soto. And the same is said of nephews and great-nephews; and also of affines of the same kind, such as daughters-in-law, sons-in-law, etc. The same applies to religious with their superiors, in those matters in which they cannot avoid communication. The same applies to soldiers with their commanders, and to servants with their masters; thus, the common doctors. But it should be noted that 1. servants sin if they engage in service with an excommunicated person in bad faith, unless necessity excuses them; Suarez, Castresan, Salm, etc. 2. That they themselves are not permitted to communicate in those things that do not contribute to due service; therefore, they sin if they communicate in the sacred rites, unless they are obligated by the due service of that person, such as accompanying him to church; or by a special agreement, for example, to serve in the sacred office, to assist him in the recitation of the Divine Office, etc.; thus, Suarez and Salm. 3. It should be noted that servants who are excommunicated by the same master cannot communicate with each other, unless it is necessary for their common cohabitation; and this only in the case where they cannot conveniently find another master; Navar, Suarez, and the Council. 4. It should be noted that just as children, wives, servants, etc. can communicate with an excommu-

nicated person, so too can parents, husbands, and masters communicate with their excommunicated subjects; Soto, Castresan, and others, with St. Thomas (5). 25. - IV. Res ignorata: This refers to ignorance, or inadvertence, either of the law, or of the fact; canon. "Quoniam," question 11. But does crass ignorance excuse? Bonacini and Salm deny this; but Suarez, Contini, Hurtado, and Holzmüller probably and commonly affirm it: first, because those who are ignorant are excused from ci- (1) Book 7, number 202. - (2) Book of Doubts, 2. - (3) Supplement, question 23, number 1. - (4) Book 7, number 202, see Doubt 2. - (5) Numbers 207 and 204.

[*Latin ed. p. 582*]

570 TRACTATE XIX. ON CENSURES AND IRREGULARITIES. Those who are culpable are also understood to be subject to censure; while those who are ignorant without fault are, without doubt, excused. Secondly, because in the text, when it is said that the ignorant are excused, it states: "For we see many daily perishing for the cause of excommunication, etc."; therefore, the Pope intends to excuse even the culpable, because those who are ignorant without fault neither sin nor can perish (1). 26. — Necessity: This refers to any grave necessity, whether spiritual or temporal, affecting either a cleric or a layperson. Avila, Sayr, Liguori, Bona, Castr, Salm., etc., commonly state this, citing the canon. Furthermore, as stated in c. 34 of the Decretum, necessity excuses even under coercion by a grave and unjust fear (2), as previously mentioned in treatise 2, note 44. Finally, it should be noted that there is no obligation to avoid excommunicated individuals, unless it is certain that they should be avoided, at least due to public notoriety, or by two trustworthy witnesses; Sanch, Nav, Bona, Castr, Salm., and Tourn. all agree. However, they rightly point out that if there is doubt as to whether a confessor should be avoided, one may not confess to him, due to the danger that he might be invalidly absolved. The aforementioned authors state that it is permissible to communicate with someone who has been excommunicated if there is one trustworthy witness present, or even if the excommunicated person himself (if he is otherwise trustworthy) asserts that he has been absolved (3). 27. — Finally, regarding the effects of minor excommunication, there are two: one direct, and the other indirect. The direct effect is to deprive the individual of the use of the sacraments, specifically the reception of them. However, it should be noted that, as stated from the beginning, while minor excommunication is incurred by law only for communicating with an excommunicated person who should be avoided, this does not prevent the bishop from prohibiting someone from receiving the sacraments for other just reasons. The question arises: Does one sin by administering the sacraments to someone under minor excommunication? The common opinion is that it is not a mortal sin. There is doubt as to whether it is a venial sin? Sayr, Conin, Castrop., etc., affirm this, citing from the chapter "Si celebrat" in the De Clericis Excommunicatis,

where it is stated: "One sins by administering the sacraments." However, Suar, Vill, Nav, Bona, Salm, Bus, and many others likely deny this, as it is stated elsewhere in the same text: "But they are not excluded from the administration, but from the reception of the sacraments." And the preceding words, "one sins, etc.," are understood by the doctors to mean that when a minister, in order to administer a certain sacrament, must first receive another sacrament, as is the case with a bishop, who must first celebrate or receive the Eucharist before administering orders, or with a priest, who must first celebrate Mass before administering the Eucharist; much more so, since the text speaks of this case (4). The other indirect effect is to deprive the individual, even of a grave benefit, from receiving benefits, as stated in the same text, chapter "Si celebrat." And although the text only speaks of reception by election, the doctors commonly understand this to apply also to reception by collation and presentation; Laym, Castr, Suar, Bona, Salm, Croix, etc. However, it should be noted that such an election is not invalid in itself, but is only invalid if the excommunicated person is knowingly elected, as stated: "If an excommunicated person is knowingly elected, his election is invalid." But on whose part is this knowledge required? Some believe it is required on the part of the elector; others believe it is required on the part of both parties; others, however, as Laym and Castropal, believe (1) Book 7, note 205. (2) Note 206. (3) Note 207. (4) Notes 148 and 149.

[*Latin ed. p. 583*]

OF EXCOMMUNICATIONS NOT RESERVED. 571. It is, perhaps, more probable that those who are elected are required to make a declaration, namely, that when a benefit is conferred upon them, they remember that they are excommunicated; because it is more likely to be attributed to the elected rather than to the excommunicated (1). It should be noted here that a lesser excommunication can be absolved by any confessor, but not by a simple priest (2).

POINT III. OF EXCOMMUNICATIONS NOT RESERVED.

38. I. Of excommunications not reserved. — 29. Of excommunications for compelling girls to enter monasteries, etc. — 30. II. Of excommunications reserved to the Pope. — 31 and 32. Of censures concerning the question of the conception of the Blessed Virgin. — 33. For those who break the enclosure of nuns. For those who enter [a place] for a wicked purpose, under the pretext of permissions. — 34. Whether a written permission is required, and whether it must be special. — 35. From whom it must be requested. — 36. For what reason. — 37. Concerning the confessor. — 38. Concerning the physician and others. — 39. If he does not leave immediately. And for those who enter for a wicked purpose, but with permission. — 40. Of

the prohibition of speaking with nuns, especially those under vows. — 41. Of the reserved case, of minor matters, of those who are joined together and those who are underage. — 42. Whether with the abbess, etc. — 43. Whether regulars incur censure from the bishop. — 44. Whether pilgrims, etc. — 45. Whether bishops, etc. — 46. Of nuns who break their enclosure. — 47. Of the enclosure of religious. — 48. Against those who assault clerics. — 49. Of those who command, ratify, or do not prevent an assault. — 50. He who comes in the name of a cleric, or a monk. — 51. For what reasons he incurs [excommunication]. — 52. For what reasons he does not incur [excommunication]. — 53. III. Of excommunications by the Bull of Celæ. Against heretics. — 54. Against their supporters. — 55. Against those who read, or retain books, etc. — 56. What is required to incur this censure for books, etc. I. That it be done knowingly, etc. II. That the author be a heretic. — 57. III. That the book deals with religion, and contains heresy. — 58. IV. Of a grave matter. — 59. He who hears it read, or who reads letters or a manuscript. — 60 and 61. Of prohibited books in the index. — 62. He who retains books, etc. — 63. Of other cases of the Bull of Celæ.

I. Of excommunications not reserved. 28.

The following excommunications are more commonly encountered:

1. For those who extort absolution from censures by force.

2. For those who bury public usurers.

3. For those who contract within prohibited degrees.

4. For those who print books without the permission of superiors; and according to Trent (Session 4, Decree on printing, etc.), for those who print, or cause to be printed, or sell, or retain books on sacred matters without the name of the author, unless they have a license from the ordinary.

5. For those who profess a certain knowledge, but do not make a profession of faith.

6. For those who favor usury.

7. For those who occupy the goods of a vacant church.

8. For those who command the killing of a Christian.

9. For those who obstruct the seizure ordered by the bishop.

10. For those who do not denounce heretics to the bishop, and who solicit confessors.

11. For those who maintain regulations contrary to ecclesiastical liberty.

12. For clerics in a constituted office, or priests who teach law or medicine.

13. For priests who accept secular offices.

14. For clerics who lease houses to usurers.

15. Or who alienate church property, or lease it for more than three years.

16. For those who attack charitable institutions.

17. For those who falsely renounce or exchange benefices.

18. For those who presume to be absolved from the censures of the Bull of Celæ.

19. For those who enter into any office without the license of the bishop.

20. For kidnappers of women, and those who cooperate in the kidnapping.

21. For those who enter monasteries (of either sex) without the permission of the superior; but we will speak of this in n. 33 and following. Other excommunications are noted in the work (3).

29. — Furthermore, in Trent, Session 25, chapter 18, the following are excommunicated:

(1) Lib. 7, n. 150.

(2) N. 155.

(3) N. 209 to 212.

[*Latin ed. p. 584*]

572 TRACTATE XIX. ON CENSURES AND IRREGULARITIES. "Whoever compels any virgin, or widow, or any other woman, who is unwilling (except in cases expressly stated by law), to enter a monastery, or to take the habit of any religious order, or to make a profession."

Here arises a doubt: 1. Does one incur excommunication who compels a woman to enter a monastery, merely so that she may be properly educated there? Sanchinez denies this, saying that the Council condemns only those who compel someone to enter in order to make a profession or to take the habit. But we maintain the opposite, along with Suarez, Navarrelius, Bonaventure, and Fillon, because the Council clearly states later that even he who compels someone to enter incurs the censure, even if the purpose is not to cause her to make a profession or to take the habit; for it adds that those who, "knowing that she does not enter the monastery spontaneously, or does not take the habit, or make a profession, but has done so through coercion, or by means of deceit, or by undue influence," incur the censure. Therefore, if those who merely induce a girl to enter unwillingly are excommunicated, all the more so are those who actually compel her to enter.

Furthermore, since the Council makes an exception for cases expressly stated in law, Suarez, Fillon, and Bonaventure probably hold that it is permissible to compel a girl who has strayed from the path of right conduct to enter, so that she may not fall into similar errors, and so that she may become more cautious and better disposed (1). Indeed, Sanchinez and Bonaventure hold that it is permissible to compel her to enter for the sake of her own chastity; but this must be understood with a prudent suspicion that she, while living in the world, is steeped in bad habits, such as when she appears to be too inclined to associate with men, or if

there are those in her home who could corrupt her; because in such a case, the purpose of the Council is not only not adequately served, but is even contradicted (2), according to what was said above in treatise 2, paragraph 69.

A second doubt arises: Do parents incur excommunication if they induce their daughters to enter a monastery out of filial piety, by manifesting their own will? Alexander affirms this; but it is more commonly and probably denied by Rodriguez, Barbatus, Tamburrini, Portella, etc., with some firmness, even if prayers are added, as Barbatus and Rodriguez say, provided that these prayers are not vehement and repeatedly urged (3). It should be noted that this excommunication applies only to those who compel women to enter, and not to men, as Suarez, Barbatus, Sanchinez, Bonaventure, Navarrelius, Busaeus, etc., commonly say; although otherwise, these men would not be excused from mortal sin (4).

Furthermore, the Council of Trent, in the same chapter 18, excommunicates "those who, in any way, without a just cause, prevent a woman from fulfilling her will to enter, or from making a vow." By the word "enter," is meant the profession that is made by taking the veil. By the word "vow," is meant the profession, but without the veil; so the common doctors say. To "prevent" means to do so with deceit, but not merely through prayers; Sanchinez, Bonaventure, and Salmasius.

Finally, it is doubted whether one incurs excommunication if he prevents a woman from entering a monastery. Sanchinez and Busaeus deny this. But Suarez, Bonaventure, and Fillon probably affirm it, because he who prevents someone from entering also prevents her from making a profession (5).

II: We shall speak of excommunications reserved to the Pope outside the Bulla Cænæ in treatise 20, on Privileges, paragraph 46. Now we shall only speak of excommunications reserved to the Pope outside the Bulla Cænæ, and among the more common ones are: 1. Those who set fires, provided they have been excommunicated by a human being, and (1) Book 7, paragraph 212, see "Quoad." — (2) Ibid., see "Dubit." 2. — (3) Ibid. — (4) Ibid., "Dubit." 3. — (5) Paragraph 212, see "Insuper."

[*Latin ed. p. 585*]

OF PAPAL EXCOMMUNICATIONS RESERVED OUTSIDE OF THE BULL. 573 denounced. 2. Against those who violate and destroy churches. 3. Against those who communicate in the same sin as an excommunicated person by the Pope. 4. Against those who harass those who pronounce censures. 5. Against those who give, or receive, something in order to admit someone into religion. 6. Against those who commit simony, whether real or collusive, concerning orders, or benefices. 7. Against those who give, or receive, something in order to obtain some grace, or justice, from the Apostolic See. 8. Against those who engage in duels, and against their

sponsors, advisors, and supporters, and even against spectators who, by their assistance, incite them to fight (see the aforementioned, section 8, number 28). 9. Against those who usurp, or occupy, the goods of churches or other pious places. 10. Against those who demand taxes from clerics. 11. Against those who violate an interdict. 12. Against those who publish false indulgences. 13. Against those who retain the fruits of a vacant benefice, or who prevent the one who is entitled to it from taking possession. 14. Against those who teach, or support, opinions that have been condemned. 15. Against those who preach about the time of the final judgment contrary to the teachings of the Fathers. 16. Against parish priests who do not observe the oath of residence. 17. Against religious who, without a particular privilege, presume to administer the Eucharist and Extreme Unction to laypeople. 18. Against religious who, under the pretext of privileges, absolve from sins reserved to the bishops. 19. Against those who defend [the errors], where Pope Benedict XIV, of whom we spoke in section 16, number 41. 20. Against confessors who absolve accomplices in a detestable sin against the sixth commandment, according to another bull, *Sacramentum*, of the same Pope, of which we spoke in the same section, 16, number 95. The other papal excommunications that exist can be seen in the aforementioned work (1). But it is necessary to speak separately here about three other censures that require special attention, namely: I. Against those who condemn either opinion concerning the Immaculate Conception of the Blessed Virgin. II. Against those who violate the enclosure of religious monasteries. III. Against those who assault clerics. 31. — And I. speaking about the conception of the Divine Mother, it is fitting to remember the five bulls that have been issued on this point. Sixtus IV, in the *extravagantes*, *Grave nimis*, concerning relations and the Venerable [Fathers], in the year 1480, imposed an excommunication reserved upon anyone who condemns, as heresy or mortal sin, either opinion that affirms, or denies, that the Blessed Virgin was conceived without original sin, and also upon anyone who considers as true, or reads as true, books that affirm that the Most Holy Virgin was conceived in sin; and he forbade that on the feast of the Conception of the B.V., the office of her Nativity should be recited, changing the word "Nativity" to "Conception." 2. St. Pius V, in the bull *Super speculam*, number 114, in the year 1570, forbade public disputation, where men and women are present, or writing in the vernacular language about such a question, under the penalty of suspension from divine services, reserved by law, etc., except that learned men were permitted to dispute in academies, so that they might condemn either erroneous opinion. 3. Paul V, in the bull number 97, in the year 1616, forbade, under the same penalties as those imposed by St. Pius, to affirm in any public act that the Blessed Virgin was conceived in sin. On the contrary, under the same censures and penalties, he forbade those who defend the pious opinion to impugn and discuss the

opposite opinion, saying: "They must not impugn the other opinion, nor act or treat of it in any way." 4. Gregory XV, in the bull number 20, in the year 1622, forbade that it be asserted, either publicly or privately, that the Conception of the B. Mary was made in sin; he conceded only (1) Book 7, page 218.

[*Latin ed. p. 586*]

574 TRACTATE XIX. ON CENSURES AND IRREGULARITIES. to the doctors of the Order of Preachers, so that they may have private discussions among themselves on such matters. 5. Finally, Alexander VII, in the year 1661, in the bull *Sollicitudo*, first declares the pious opinion concerning the immaculate conception of the Blessed Virgin Mary to have been widely and extensively promulgated, so that "even in the most celebrated academies, almost all Catholics now embrace this opinion"; then, under the same censures and penalties, he renews the decrees of his predecessors, and commands that they be observed in favor of the feast and the cult of the conception of the Blessed Virgin, according to the pious opinion. And, in addition to the penalties imposed by Sixtus IV, which deprive those who would call it into doubt, or interpret it in another sense, whether by word or in writing (declaring all their books in which this has been done to be condemned), of the faculty of preaching, teaching, and exercising the active and passive voice, in favor of the pious opinion and the cult, those who assert something contrary to the pious opinion, or who present arguments against it, and leave the matter unresolved, (1) incur the following penalties. 32.—From all of this, it follows that 1. according to Bonaventure (who discusses this matter distinctly), the following incur penalties: 1. he who would say that it can be defended that the opinion opposed to the immaculate conception of the Blessed Virgin Mary is true, or who would present reasons for that opinion, unless he does so in order to refute them. 2. He who asserts that the feast of the conception is celebrated because the Blessed Virgin was sanctified in the womb of her Mother, when he thereby openly presents himself as one who contradicts the pious opinion. 3. He who transcribes an opinion opposed to the pious opinion, so that it appears that he intends to embrace it (2). 4. Transgressors are, by this very act, suspended from ecclesiastical functions; and, as Bonaventure holds, they also incur the disability to perform certain offices; but, with regard to the deprivation of the voice and of dignities, etc., a judgment is required. 5. These penalties are incurred both by clerics and by laymen, as is evident from the bulls of Paul V and Gregory XV. 6. Only the Pope can absolve from these penalties, or the bishop, if the sin is hidden; but, as for those who are supporters of the pious opinion, it is certainly forbidden for them, under pain of excommunication, to assert that this is an irrefutable dogma of the faith, noting any opposition; but it is not forbidden for them to defend it by reasons and authority: because, although in the bull of Paul

V it is forbidden to publicly oppose it, and even to discuss it, nevertheless, some say that the aforementioned bull is not accepted or understood in this respect, or that it is intended only for those who defend the pious opinion as a dogma of the faith, as indeed the bull of St. Pius states; but the more certain and clearer answer is that the aforementioned bull was moderated by the most recent one of Alexander VII, in which it is openly granted to refute the arguments of the opposed opinion, while it condemns the act of preaching, speaking, or treating against the pious opinion, "by presenting arguments against it, and leaving the matter unresolved." Therefore, the Pope clearly grants the right to present opposing arguments, and to refute them; therefore, he grants the right to discuss the pious opinion, and to defend it (3). In the work (4) there is a defense of the pious opinion; and also the opinion that it is permissible to shed one's blood for such a pious opinion, since such a cult of the Most Blessed Virgin is an act of religion; for St. Thomas (5) says that martyrdom can be accepted for the defense of any virtue: and Benedict XIV (6) says that he who sheds his blood for the defense of any pious opinion, or to avoid omitting any act of virtue, is considered by the Church to be a martyr. (1) Book 7, no. 244. — (a) Nos. 245 to 247. — (3) No. 248. — (4) Nos. 249 and 255. — (5) 2. 2. q. 134, a. 5. — (6) *De Canoniz. SS.*, book 1, chapter 14, no. 13.

[*Latin ed. p. 587*]

OF PAPAL RESERVED EXCOMMUNICATIONS OUTSIDE THE BULL. 575 33. — II. Concerning the closure of monasteries, and first, of convents of nuns, it should be noted that 1. any person, of either sex, who enters a convent of nuns without written permission from the bishop or superior, incurs excommunication by the very act, according to the Council of Trent, Session 25, Canon 5. Many doctors, such as Suarez, Azorín, Bona, Barbatus, etc., have stated that it is permissible to bring a child in, because the prohibition primarily applies to those who enter; therefore, children are not bound by the precept, nor are the nuns bound by it; but the Sacred Congregation has repeatedly declared the opposite. Therefore, entry should be prohibited even more strictly for those who are beloved, from whom a greater scandal may be feared (1). By a bull of Gregory XIII, *Dubiis*, edition of December 23, 1581, bishops are forbidden, except in cases of necessity, under penalty of suspension from office for the second offense, and excommunication for the third, and regular prelates under penalty of deprivation of any office, and even excommunication for the first offense, as stated by Sanchez; but Bona and Lamas also want this for the third offense. However, in cases of necessity or visitation, the aforementioned prelates may enter; but regular prelates may only enter once per year for the purpose of visitation, and without the assistance of the bishop, or another ecclesiastical person designated by him, according to the bull *Felici*, Alexander VII, 156. Bishops, on the other hand, should enter accompanied

by only a few, namely senior and religious persons, as stated in the bull of Gregory: "a few" are understood to mean four or five, as stated by Vettorli and Tamburrini, and by Alexander; otherwise, for the first offense, they incur an interdict from entering the church, for the second, suspension from divine offices and pontifical functions, and for the third, excommunication by the very act, as stated in the aforementioned bull of Gregory XIII. Fagnan also proves this in chapter *Nuper* 29, section 39. As for regular prelates, if the general enters, he may bring with him members of his order of proven virtue and mature age; if another, inferior prelate, only one (2). It should be noted that 3. the aforementioned excommunications are not reserved; but there is a reserved excommunication imposed by order of Clement VIII in the year 1602, on those who enter monasteries for a wicked purpose. A wicked purpose is considered by Mazotta to be any perverse purpose; but Pellizzari understands it better as a shameful purpose, since here the purpose is the closure, namely, to preserve the chastity of virgins (3); therefore, access and conversation, which also pertain to the closure, are prohibited, as we will soon say in number 40. It should be noted that 4. there is another reserved excommunication from Gregory XIII in the bull *Ubi gratia*, in the year 1577, on anyone, even women, who enter the enclosure of nuns (and in women who enter the enclosure of religious men); but this is understood only for those who enter under the pretext of certain privileges, as stated by commentators Sanchez, Suarez, Fagnanus, Bona, etc., against Navar and Azorín, while in the aforementioned bull it is expressly stated "under the pretext of certain privileges" (4). And then all superiors, whatever their title, incur this excommunication; they are understood to be, as stated by Sanchez, Manuel, Diana, and others (5), priors, guardians, correctors, etc., who allow someone to enter or remain, who has entered in this way, according to the bull of Paul V, *Monialium*. But it should be noted that in these two bulls, the prelates who enter without cause are not included (6). 34. — It is asked 1. whether permission to enter monasteries of nuns must be in writing? Sanchez, Suarez, and Castr claim that it must.

[*Latin ed. p. 588*]

576. TREATISE XIX. ON PERMISSIONS AND IRREGULARITIES. Some, such as Innocent, Abbot Felin, and others, maintain that Holy Scripture is valid only for external matters, according to what is stated in treatise 7, paragraph 20. Others, such as Barbos, Villalonga, and Rodino, contend that a license is not required in writing for entries into convents in ordinary cases, as is the case when a physician, confessor, or worker enters, whose work regularly requires access to the nuns (1). However, there is no doubt that the aforementioned license to enter the convents of nuns must be special for a designated person, since it is stated in chapter "De Periculoso," concerning the status of religious, in paragraph 6: "unless a special license..."

(2). Furthermore, it is permissible for the prelate to entrust the granting of this license to the abbess, or to another prudent person, as stated by Navar, Bonacini, Graff, and Barbos, against Suaro (3).

35. It is asked: Who is to grant the license? The answer is: The bishop for monasteries subject to him, and also for those subject to the Apostolic See, granting it then as a delegate of the Apostolic See, as stated in the Council of Trent, session 25, canon 5. Vicars capitular can also grant it, and also (according to what is stated by Sanchez, Bonacini, etc.), prelates who enjoy jurisdiction as if they were bishops; and it is probable that vicars general of bishops can also grant it, with regard to monasteries subject to the bishops, as stated by Sanchez, Navar, and Lamas. Furthermore, it is stated in the Motu Proprio of Pope Pius V, "Decori," that the bishop, or another ordinary of the place, and under the name of ordinary (as demonstrated by Sanchez), is also included. Therefore, as demonstrated by Fagnanus (4), the vicar can do everything that the bishop can do in matters that are within ordinary jurisdiction (5). However, in monasteries subject to a religious order, the license must be granted by the regular prelate, as stated by Bonacini, Barbos, Castrillon, and Fagnanus, with the decree of the Holy See, which states in the Council of Trent: "Without the license of the bishop, or superior." And Sanchez states that this was declared by Pope Pius V. However, this is not understood for dioceses where the opposite is in force, according to the declaration of the Holy See approved by Pope Urban VIII (6).

36. It is asked: What is the reason required to grant this license? The answer is: According to the Council of Trent, session 25, canon 5, necessity is required, as it is stated there: "But a license must be given... in cases of necessity." And this necessity must be on the part of the monastery; therefore, it is not sufficient if it is on the part of outsiders, unless it is the case that natural law suggests the contrary, as stated by Bonacini and de Alexandri, with the common opinion and with the decree of the Holy See. Therefore, it is not permissible to place a wife in a monastery in order to free the husband from his anger, or so that he will not break his faith again, as decreed many times by the Holy See. However, (as stated by the Holy See), the bishop can place a girl about whom there is a dispute in the monastery, until the dispute is settled (7). When speaking of this necessity on the part of the monastery, it must be understood morally, since, as stated by Sanchez, Bonacini, Barbos, de Alexandri, Miranda, etc., it is sufficient if there is a probably just cause; a lesser cause is required, as stated by Barbos, for entering to see women than men; for daily entry than for nocturnal entry; for the main buildings than for the private quarters. However, when there is an urgent necessity of fire, death, violence, and the like, a license is not required, because in such dangers, human law does not obligate, as stated by Sanchez, Navar, Graff, de Alexandri, etc., in common. Therefore, in the case of imminent death, any priest can enter to give absolution, and

also the Eucharist and extreme unction, as stated by many doctors (8).

(1) Book 7, paragraph 225.

(2) Ibid., Dubit. 4.

(3) N. 224, v. Abbat.

(4) Book 10, chapter "Quoniam," on Offices and Laws.

(5) Book 7, number 224, v. "An autem."

(6) Ibid., v. "Major."

(7) N. 225.

(8) Ibid., v. "Talis."

[*Latin ed. p. 589*]

OF PAPAL RESERVATIONS OUTSIDE THE BULL. 577 37.—Furthermore, the ordinary confessor may enter (but with permission) not only to administer the last sacraments, but also to administer Holy Communion to a nun who is infirm; Bonacin., Barb., Sanch., Rodrig., etc., with the common opinion, and with the declaration of the Sacred Congregation. Moreover, Alexander (1) states that, after hearing the confession of an infirm nun, the confessor may bless a newly constructed building within the monastery, and may also bring a relic to another infirm nun, to which she is devoted; and similarly, for a just cause, he may remain in the monastery for a short time to inspect the workshops, or to discuss some temporal matter. Several doctors also state that an extraordinary confessor, who enters with permission for a single occasion, if the cause of the infirmity prevents her from making a confession, may enter again without permission; and likewise, if the infirm nun recalls the confessor immediately after he has left, in order to confess some forgotten sin. The confessor must enter wearing a cassock and stole; and he must not go to other parts of the monastery, not even to visit an infirm nun who does not need the sacrament; Barb. and de Alexandr. A secular confessor must enter alone, as declared by the Sacred Congregation; but a religious confessor should be accompanied by someone of mature age and proven virtue, as stated in the bull of Alexander VIII. While the confessor is hearing the confession, companions must be present at the door so that they can see him. The confessor may also stay overnight in the monastery if a nun is seriously ill. He may also enter to bless the monastery if it is infested by evil spirits; as declared by the Sacred Congregation. But if a nun is possessed, the Sacred Congregation forbade a priest from entering to exorcise her, and stated that permission must be obtained from the Sacred Congregation itself to perform the exorcism in the church outside the monastery (2). 38.—As for the physician, speaking of the ordinary physician, he must renew his permission every three months, according to the decree of the Sacred Congregation of March 17, 1580. He must be accompanied by two senior nuns; and he must enter alone, unless the infirmity requires the

presence of others. However, an extraordinary physician may only enter in the absence of the ordinary physician, and when a chapter meeting is being held. A surgeon may also enter to draw blood, and a pharmacist may enter to teach, if necessary, how to prepare medicine. Also, craftsmen, notaries, and the like, may enter to assess an imminent collapse, or to find a necessary document in the archives, or to draw up a will for a young woman. Thus, also, a carpenter, gardener, mason, baker, porter, and others of that kind may enter with permission. But it should be noted with Sanch. and de Alex. that if permission is given for one particular porter, if he is absent, another cannot take his place. Bon. and Castrop (contrary to Sanch.) rightly state that it is not permitted for a tailor to enter to properly fit clothes. If, however, permission was given for a student to accompany a master, de Alex. states that it is probable that the student may enter, or remain there, even without the master (3). 39.—A question arises: Does entry with permission incur excommunication, or is it sinful, if, having already performed his duty, he remains there for a long time without leaving? Answer: As far as censure is concerned, it does not incur censure, provided he remains there longer; because the enclosure is only violated when someone enters (1) De Alexand. de Monial, esp. 7. 26, quæst. 9. — (2) Lib. 7. n. 227, — (3) N. 226. 37

[*Latin ed. p. 590*]

578. TRACTATE XIX. ON CENSURES AND IRREGULARITIES. It is said that one incurs a censure if one enters a cloister without permission; thus, Sanchez, Bonaventure, Zerola, Bordone, etc. However, Sanchez states that one does not incur a censure if one enters with permission, but remains there for an improper purpose. Bonaventure, however, observes that although one may not incur excommunication by the Council, one does incur excommunication by Clement VIII against those who violate the enclosure for an improper purpose. But one might object that, since the censure of Clement is a penalty, it must be strictly understood, just as the Council's censure is (1). Furthermore, Rodriguez and Zerola, and Alexander, argue that those who enter for an improper purpose, but with permission, do not incur the aforementioned excommunication; and Bonaventure and Sanchez call it probable (2). This concerns the censure; as for sin, we say that if one enters with permission and delays, if the delay is long, one sins mortally; if it is brief, venially; thus, Bonaventure, Barbatus, and others generally. Sanchez, Rodriguez de Molinos, and Miranda even state that if the delay is very brief, one is excused from the venial sin, since this practice is also accepted by the more pious (3). Villalobos and Diana, however, consider a quarter of an hour to be a moderate delay (3). 40. This matter of enclosure also concerns the prohibition of speaking with nuns. It is necessary to know that in the chapter "Monasteria," concerning the life and honor of clerics, excommunication was imposed on laymen (but a sentence to be car-

ried out by the bishop) and suspension on clerics who presume to frequent the monasteries of nuns (4). The Doctors, however, hold that this frequency is considered to have occurred when one approaches the monastery three times in three consecutive days, or once each month of the year, or four times in one week (4). This prohibition was later imposed more strictly on religious, both in chapter "Definimus" 21, causes 28, question 2, and in the decree issued by order of Sixtus V, where it was forbidden not only to speak with nuns, but also with any woman staying in the monastery (5). An exception was made for superiors by a decree of the Holy Congregation, issued by order of Urban VIII on November 10, 1623, allowing religious to be granted permission to speak with nuns in the first or second order, up to four times a year: except on holidays, Advent, Lent, Saturdays, and vigils; but with the condition that permission must be given in writing, and must be noted in the records by the bishop, and then given to the monastery's confessor, who must observe it; and that they must be accompanied by female listeners and not others, while the religious is speaking with the nun; it is also declared that if the bishop acts otherwise, he transgresses the Pope's intention; and that the religious incur the same penalties imposed by Sixtus V, namely, deprivation of office, and loss of active and passive voice (5). However, in Benedict XIV (de Syn. l. 9. c. 15. n. 7), and in Monacelli (vol. 1, in Append. p. 436), I find that the Sacred Congregation, when asked whether religious who approach to speak with nuns without the bishop's permission incur mortal sin, responded affirmatively, even for a reasonable cause, when there is no permission. Benedict XIV also states in the bull "Gravissimo," issued on October 31, 1749, by the Sacred Congregation, that it is not permitted for religious "without the bishop's order to freely enter the cloister of the nuns to whom they are attached." From these passages, it is clearly inferred that if one enters (1) Lib. 7. n. as 8. — (2) Ibid. Dubit. 8. — (3) N. as 6. Resp. a. — (4) N. as 5. — (5) N. as 3. v. Circa Butem.

[*Latin ed. p. 591*]

OF PAPAL RESERVATIONS OUTSIDE THE BULL. 579. The bishop may grant permission to religious men to speak with nuns, but this must be done in the presence of the Holy See. It should also be noted that another decree of the same Holy See, dated May 21, under Benedict (numbered 12, possibly with an error in the placement of the number, as indicated by "apud Monac." - meaning "among the Monks"), 1678, declared that religious men who, after having a conversation with nuns, also converse with them without the bishop's permission, even about spiritual matters, are subject to the same penalties. Furthermore, another similar decree, as cited by the author who adds notes to the Bibliotheca of Father Ferraris, volume 5, under the entry "Moniales" (nuns), after number 59, question 1, states that Father Gaudentius of Visit. holds the opinion that, given current practice, "everywhere" the ordinary of the place "grants these permissions

to religious men to speak with nuns." Father Ferraris himself agrees with this, as stated in the entry "Moniales," articles 4, numbers 15 and 49, 41. These are the general laws, but in almost all dioceses, and especially in Naples, there is a reserved case with excommunication for those men who, without having requested permission, speak with any woman who is in monasteries or convents, except for those who are enclosed in the first or second degree; it is declared that those who have obtained permission cannot, through work or otherwise, speak with others. Several things must be noted here. 1. According to the more probable opinion of Father de Alex. de Januariis and Jordan, it is not only access that is prohibited, as Sanch. and Bonac. believe, but formal access, that is, access with the effect of conversation, as can be deduced from the cited text. We define where access to conversation is prohibited; and in the aforementioned decrees, mention is always made of access with conversation. Therefore, it is also probable that Lezana, Tamb. de Alex., Bon., Graff., etc., state that the prohibition (in itself) does not include those who speak with a nun from an adjacent house, because in that case, there is no access; nor those who write or speak through a messenger, as Bon., Barb., Mass., etc., also state. It is said "in itself" because in the Neapolitan case, those who engage in obscene conversations through letters or messengers are expressly included. 2. Furthermore, according to the reserved case, one also commits mortal sin by speaking with a nun even once, unless the matter is of very little consequence. The "little consequence" is considered by some to be the space of a single "Miserere" (a prayer), as stated by Diana and Mazzot., while others consider it to be a quarter of an hour, as stated by Quarti and Verricell. However, in a decree approved by Clement IX on March 1, 1699, it was forbidden for religious men to speak with nuns for any length of time, under the penalty of mortal sin and excommunication. Nevertheless, Ciera states that this decree does not condemn the opinion of Quarti, that a quarter of an hour is a small matter, since the decree only condemns the opinion of a quarter of an hour and a half: "Those who claim that there is no prohibition for a short time, even up to a quarter of an hour with half, are mistaken." Therefore, these people argue that the proposition has been condemned jointly. I leave the judgment of this opinion to learned men, but I do not dare to approve it, because of other words that are added to that prohibition, "for any length of time." It should be noted that if someone were to speak with a nun for many days, even if for a short period, they could also commit mortal sin: because such conversations, even if not physically joined, are at least morally joined (1). 3. Furthermore, it is not permitted to speak with a nun about a spiritual matter without permission, as correctly stated by Ciera (1) Lib. 7, n. 336.

[*Latin ed. p. 592*]

TRACTATE XIX. CONCERNING CENSURES AND IRREGULARITIES.

Against Lezana, Peyr. Bord., etc., because the end of the prohibition is never fully achieved in this matter, namely, the danger of the mind adhering to a custom that becomes carnal instead of spiritual; concerning which, the Holy See declared that, for no reason whatsoever, even a reasonable one, are religious permitted to converse with nuns. See above, n. 46, at the end. (1) Note 4: Those related by blood are excepted from this prohibition, namely, those related in the first and second degrees of consanguinity. Ciera also exempts those related in the second and third degrees, because when a dispensation is requested to marry between those related in the second and third degrees, the second degree must also be specified, and a greater expense is required; therefore, it is understood that this mixed degree cannot be strictly called the third, but rather participates in both, and therefore, those related in such a degree should enjoy this privilege; and since, in matters that are odious, laws are to be restricted, it follows that unless a religious is related to a nun in the third degree simply, it is not understood to be included in the prohibition; but I hold the opposite view, since those related in the second and third degrees cannot truly be said to be in the second degree. 2. Those who converse with nuns are subject to grave danger, because this is contrary to the rules of positive law. 3. Mendicant friars, by reason of custom or tacit permission, and likewise servants who bring gifts and quickly depart; Pell. de Alex. and Mazz. (2). Note 5: Even if not excused from grave guilt, those who are underage, if they converse with nuns, do not incur excommunication, as rightly stated by Bonac. de Alex. Dian. and others (against de Graffis) from the chapter "Concerning Boys," concerning the sins of boys, where it is said that boys are not to be punished like adults, and in the Neapolitan diocese, those who have not yet reached the age of 14 are expressly exempted from the reservation for boys (3). 42.—Question 1: Is it permissible to speak with an abbess without permission? Ciera, Megalla, de Alex. Graff., etc., deny this, saying that in the decree of Sixtus V, it is forbidden to speak not only with nuns, but also with any person in the monastery; and Alexander VII, in the constitution "Sacrosancti," forbade conversing even with abbesses. But Lez. Pelliz. Tamb. Januar. Mazzot. Diana and Potestas affirm this, because, according to the Panormite Glossary, etc., under the name of nuns, the abbess is not included in those things that are odious. And Potestas responds to the bull of Alexander, saying that that decree was for the city of Rome. 43.—Question 2: Do religious, by speaking with nuns, incur excommunication reserved by the bishop? Whatever others may say, affirming with the common opinion of Sanch. Barb. Bonac. Fagnan. and de Alexand., with the decree of the Holy See, this is also true with respect to religious who have a special privilege, so that the bishop cannot excommunicate them, as is said to be the case with mendicant friars and Jesuits by Paul III (4). For bishops, even in monasteries, including those subject to religious orders, are delegates of the Apostolic See, as stated in the bull "Inscrutabilis" of

Gregory XV, which was declared at the Council of Trent, as Benedict XIV states, book 9, chapter 15, n. 6, and as will be said below in tractate 20, n. 80, and below, n. 5. 44.—Question 3: Do pilgrims who reside somewhere for a time incur excommunication there, by speaking with nuns? There are three opinions: 1. It is denied, as stated by Pelliz. Diana, etc., saying on the one hand that pilgrims are not subject to the laws of the place; on the other hand, they say that bishops are designated by the council to de-

[*Latin ed. p. 593*]

DE EXCOMMUNICATIONIBUS RESERVATIS PAPAE EXTRA BULLAM. 581. The apostolic canons, however, pertain only to the restoration and preservation of enclosure, a matter not covered by conversation. But this opinion is not entirely probable, for, as Fagnanus and de Januar rightly point out, conversation, according to the common understanding of the terms, certainly pertains to the preservation of enclosure; indeed, in chapter *Periculoso*, concerning the status of religious, it is stated: "No one shall have access to them [the nuns], so that, being entirely separated from worldly distractions, they may serve God completely." Therefore, the prohibition applies to both entry and access, with the aim of preserving the nuns from human distractions.

2. The opinion states (speaking generally) that visitors, even if they stay elsewhere for a short time, incur excommunication.

3. Donatus and de Januar distinguish: they incur excommunication if the monastery is exempt, because in such a case, the bishop acts as a delegate of the apostolic see, and therefore has jurisdiction even over visitors; otherwise, if the monastery is subject to the ordinary jurisdiction of the bishop, the visitors are not subject to that jurisdiction for the brief time they are present there, according to the more probable opinion mentioned above in section 2, number 41 (1). However, it seems that they do not incur such excommunication, even if they speak with those in exempt monasteries, for the reason which we will explain in the following sections. For Benedict XIV, in the aforementioned bull *Gravissimo*, § 3, after asserting that bishops act as delegates in exempt monasteries within their ordinary jurisdiction, § 5 states that bishops and other externs do not incur penalties because they are not subject to the bishop's ordinary jurisdiction. And although bishops act with delegated authority from the apostolic see in exempt monasteries, the jurisdiction with which they act is still their own, as it is permanently attached to their episcopal office by canon law.

45. A question arises: Do bishops sin, and incur excommunication from the ordinary, by conversing with nuns of another diocese? As for sin, they do not seem to be excused, since in the aforementioned chapter *Periculoso*, the prohibition is general and applies to all: "No one shall have access." There is no provision found where bishops are exempted from these common laws, as Bonaventure states with reference to the Roman canon.

However, Mazzolini, Daniel, and Graff hold that they do not incur excommunication, based on chapter *Cum inferior*, concerning major superiors and obedience, from which it seems to follow that an equal cannot bind an equal. But P. de Alex states, citing Panormitan and Hostiensis, that a bishop in another diocese is to be considered as a private person (2). But despite these considerations, it must now be stated with certainty that such bishops do indeed sin, but do not incur excommunication. For Benedict XIV, in the bull *Gravissimo*, issued on October 31, 1749, § 2, reports that the Sacred Congregation has decreed that governors, prelates, or bishops, when coming to or staying in cities or towns subject to the jurisdiction of another bishop, shall not approach the monasteries of nuns, § 5: "It has already been said that these people are subject to the authority and constitutions of the bishops (namely, with regard to sin), which completely prohibit access to the cloister of nuns without due permission. Since these same people are not subject to the ordinary jurisdiction of the bishops, and therefore are immune from coercive power, that is, from penalties for transgressing the statutes," as is clear from chapter *A nobis* 21 de sent., etc.

46. Furthermore, there is excommunication imposed upon those nuns who leave the enclosure, as stated in the bull of St. Pius V, *Decori*, 1569. And ex-

[*Latin ed. p. 594*]

582. TRACTATE XIX. ON CENSURES AND IRREGULARITIES. The censure of excommunication is incurred even if a nun steps outside the monastery by only a single foot, as Sanch and Bonac, along with Graff and Croix, state with probability; provided that the entire person exits. She would also incur excommunication who would permit a nun to leave, or who would accompany her, or who would receive her after she has left. Only an exit due to a great fire, or leprosy, or an epidemic is permitted. Note 1: This must be understood when there is no time to request permission, at least from the bishop or a regular prelate. 2. Under the term "fire," is also included a flood, an invasion of soldiers, the collapse of a building, and any other similar danger, as Sanch, Bonac, Nav., and Barbos state. 3. Under the term "epidemic," the Sacred Council declares that a true pestilence is to be understood, contrary to Nav., Sanch., Bonac., Holzm., etc., who state that any contagious disease is to be understood, such that the infirm cannot be cured in the monastery without the risk of infecting others; and from the same chapter, under the heading "Dangerous," it is forbidden for nuns to leave, unless some of them cannot remain with others without grave danger or scandal. Conversely, Bonac, Barbos, and others (contrary to Suar., Nav., etc.) rightly state that it is not sufficient for a nun to leave merely because of a serious infirmity, but not one that poses a risk of infecting others. Note 4: As Sanch and Bonac state, a nun who

has left must, as soon as she has recovered, re-enter; this is understood immediately in a moral sense, namely after one or two days have passed.

47. Thus far, regarding the censures concerning the enclosure of nuns. Another censure applies to women who violate the enclosure of religious houses; from the bull of the Regular Canons of St. Pius V, 1566, and another from Gregory XIII, 1575. And these women incur excommunication, not only those who enter monasteries of men, or monasteries of women under the pretext of certain functions, as was stated in number 33, but also those who enter without such a pretext, as St. Pius V declared in another bull, Romanum, as is commonly understood by Castrop., Suar., Bonac., Sanch., and Salm., whatever others may say. However, an exception is made in the case where a woman enters the enclosure to avoid imminent death. Also, queens, princesses, and the like are excepted, as commonly stated by Suar., Sanch., Bonac., etc. Founders and women who are members of the founder's household are also excepted. But Benedict XIV, in his bull Regularis disciplina, 1742, declared that these cannot enter without a special apostolic dispensation; moreover, he expressly forbade women from entering the enclosure of religious houses under any pretext, even that of piety, from which what was permitted by St. Pius V in the bull Decet was revoked, namely that women could enter to join a procession, or to hear Mass, or to attend a sermon. Bonac, Barbos, and others state that the sacristy of a religious house is also an enclosure; but P. Ferrar (4) asserts that the practice in almost all countries is to the contrary.

48. III. Let us speak of the excommunication imposed on those who assault clerics. This is found in canon 17 of the 4th quaestio, where it is stated: "If anyone, incited by the devil, inflicts violence upon a cleric or a monk, let him be subject to the anathema; and let no bishop presume to absolve him, unless under the imminent threat of death, until he is presented to the apostolic see, and receives its mandates." We will explain the text. It is stated that 1. If anyone, that is, any person of any sex or age,

[*Latin ed. p. 595*]

OF EXCOMMUNICATIONS RESERVED TO THE POPE OUTSIDE OF BULLS. 583, provided it is done with due reason, as is stated in chapter "To the Young Men," concerning sentences of excommunication (1). 49. — Also, all those who effectively command or consent to the assault incur this excommunication, as is stated in chapter "Of What Extent," and in chapter "Of Women," concerning sentences of excommunication. It is said to be effectively done when it is required that those who incur the excommunication through this act, have the assault as their cause, and that their influence is grave; thus, Suarez, Navar, Bona, Salm, etc., with their commentaries, say that Concinius, Avila, Diana, Salm, Croix, etc., in chapter "Of Homicide," number 6, state that if someone were to say: "I desire to take revenge on such a cleric," foreseeing that others would already be incited by his words

to seek revenge, this person would already incur excommunication if the assault occurred (2). Also, those who ratify the assault incur it, as is stated in chapter "When Someone," concerning sentences of excommunication. But in this case, it is required that 1. the assault was done in the name of, or for the benefit of, the person. 2. That the ratification is made externally known to others. 3. That when the assault occurs, the person was capable of giving the command or counsel, at least habitually, e.g., if he were drunk or asleep; otherwise, if he were insane; Suarez, Sayr, Bona, Castrop, Concinius, Salm, Croix, etc. (3). Also, those who do not prevent the assault, and are obligated to prevent it by justice, such as princes, prelates, judges, parents, guardians, lords, masters, pastors, etc., incur it, as is stated in chapter "Of What Extent," where it is said: "Those who favor those who, when they can, cease to oppose the crime." On the other hand, those who are obligated to prevent the assault only out of charity, are permitted to omit preventing it out of hatred; thus, Navar, Bona, Laym, Concinius, Castrop, Molin, Salm, etc., with the Glossa in that chapter, number 5. We interpret this (contrary to Suarez and Cajetan); and rightly so, because only those who can prevent the assault by their authority are considered to favor it if they do not prevent it, and therefore, by not preventing it, they seem to concur in its approval (4). 50. — II. It is said "cleric" or "monk." By the term "cleric" is understood anyone who has received tonsure, even if excommunicated, suspended, or interdicted; except if this person has laid down the habit, and after three admonitions has not resumed it, as is stated in chapter "What Happens," number 45, concerning sentences of excommunication, and according to the common opinion of the Doctors (5). By the term "monk" is understood any religious person, whether a convert or novice, of either sex, including tertiaries of St. Francis or St. Dominic, who wear the habit and live in community under the obedience of a prelate; Suarez, Navar, Bona, etc., commonly say this. Fagnanus says that this applies to women who live in convents, even if they are not approved by the Pope. Renzi says that this applies to seminaries, and to boys in colleges, such as the boys of piety in Naples, St. Honuphrius, etc. Suarez, Fagnanus, Tournhem, and Roncaglia say this applies to hermits who dedicate themselves to the service of a sacred place under the jurisdiction of a bishop, or (as Castrop says) who live under a certain rule with a vow of obedience. However, the Doctors commonly say that hermits who are vagrants do not enjoy this privilege, even if they are permitted by the bishop to serve in a certain church (6). 51. — It is said "has laid hands." This means any real and externally grave assault committed with mortal sin, whether by hands, or by a club, etc. But Suarez, Castrop, Bona, etc., rightly observe that (4) Book 7, numbers 364 and 265. — (2) Number 266. — (3) N. 267. — (4) N. 268 and 269. — (5) N.

270. — (6) N. 271.

[*Latin ed. p. 596*]

SECTION XIX. CONCERNING CENSURES AND IRREGULARITIES. How often is an injury considered a grave offense due to the reverence owed to a cleric? It suffices that any, even a slight, blow be inflicted to incur a censure, since in this canon, the interpretation must be taken broadly, in order to favor the ecclesiastical order (1). Therefore, the Doctors say that this censure is incurred by: 1. He who spits in the face of a cleric, or defiles him with mud, or throws water on him, or tears his clothing, pulls out his hair, or does something else to the person, such as a hat, a pallium, etc. 2. He who throws him into prison, or to another place from which he cannot leave without disgrace. 3. He who pursues him so that he falls into a pit, or is thrown from a horse; indeed, it is even likely that he who pursues him, even without any intention, incurs the censure if it happens that the cleric falls while fleeing; although others also likely deny this. 4. He who violently strikes, or hits the horse on which the cleric is riding, or holds him back; Suarez, Castrop. Bon. Laym. Salm., etc., commonly. 5. He who, by any injurious action, affects the cleric, even with his consent; Suar. Bon. Coninch. and Salm. from chapter "It happens," concerning excommunication. But Bon. and Croix note that then the censure was not of perpetual sentence, but to be imposed, since in the same text, speaking of such a case, it is said, "Let him be excommunicated." And Coninch. and Salm. say that it does not apply when the consent of the cleric removes the injurious nature of the action. But whether the cleric is excommunicated who strikes himself, it is affirmed by Laym. Navar. Suar.; but likely denied by Castr. Tol. Barbosa, Croix, Tourn., etc., because truly the canon seems to speak only of a different person who harms the cleric (2). 52. — However, excommunication is not incurred if the blow does not inflict a grave injury; hence, it is not incurred: 1. By a thief who steals secretly the purse; or the clothing of a cleric; unless he does so by force, as the Doctors say with consensus. 2. By one who strikes jokingly, or without grave fault; "Nor are clerics" (excommunicated), if they are of full age, and not out of hatred, or envy, or indignation, but out of playful levity, if it should happen that they strike each other. "The same is said by Bonacina, Filliuc. Laym. Mol. Salmant. Castropal., etc., concerning boys tonsured, or those initiated into lower orders, who strike each other with fists, even if blood flows from their nostrils; because such blows are not considered gravely injurious, although (Sotus adds) the blow might have been grave; but this must be understood, provided that it was not deliberate. The same applies if it was accidental, or for one's own defense, or for the defense of those closely connected, or of property. 3. Excommunication is not incurred by one who, in striking, does not gravely sin through lack of awareness, or through consent given out of sudden anger, as commonly said by Suar. Bon. Laym.

Castrop. Conc. and Salm. But it is asked whether one incurs the censure who strikes, ignorant that he is striking a cleric, but with the intention of striking him, even if he knew? Some affirm, but commonly and correctly deny Suarez, Vasq. Bon. and others; because to incur the censure, it is not enough to have the intention, but actual action is required. Otherwise, if the striker already doubted that he was a cleric, or if he struck him with the intention of harming him, whether he is a cleric or a layman. But if the ignorance is crass, we say, according to Sanch. Covar. Croix, etc., that the striker is not excused; for, as Sylvester and others say, if the devil suggests it, deceit is no longer required, but only the presence of mortal sin. It also applies to one who strikes a cleric, whom he believed (1) Book 7, numbers 272 and 273. — (2) Number 274.

[*Latin ed. p. 597*]

DE EXCOMMUNICATIONIBUS RESERVATIS PONTIFICI IN BULLA. There is another cleric whom he intends to harm, because he is already inflicting an injury to the clerical state (1), as we said above in chapter 10, number 85. The following do not incur [excommunication]: a prelate, a master, or a father who strikes [a cleric] (but moderately); and the Salmanticenses reasonably say the same about a senior in age to whom a cleric is entrusted, as is inferred from chapter "Concerning Will," 54, §. If anyone, according to the sentence of excommunication, allows those of his family, or those of a lower rank, to be corrected, so also the doctors allow prelates and ecclesiastical masters to correct even clerics in orders, provided that the correction is moderate. But it is doubtful whether parents can also do this? Laym, Tournhem, Molin, Castres, etc., deny it. But Suar, Tournhem, Conciles, Valentia, Avignon, Bonaventure, Salmanticenses, etc., reasonably affirm it, as is stated in chapter 1, of the sentence of excommunication, that a master is already excused if he strikes a student who is already a cleric (although he may be of full age, as is said there previously). Therefore, if a master can strike a cleric of full age, concerning which it is understood that a cleric in orders can also be struck, not only for the sake of discipline, but also for the sake of correction, all the more so can a father, whose principal duty it is to correct his children (2). 5. He is excused, as is said in chapter "If," 3, of the sentence of excommunication, who, having found a cleric with his wife, mother, sister, or daughter, violently assaults him; otherwise, if the person is not so connected to him; however, Navarrus, Tournhem, Conciles, Croix, etc., note that such an assailant is excused from censure only when he strikes him at the same time, or shortly thereafter. Furthermore, Laym and Navarrus rightly say that a man is not excused who, out of malice, even waits for a cleric, and then strikes him when he finds him in adultery; for then it is not true that he found him in the act of sin, since he was waiting for him to commit the sin. Conversely, Suar, Sayr, Sylvester, Salmanticenses, etc., reasonably excuse a woman who strikes a

cleric who is soliciting her, if she cannot free herself in any other way, even if that cleric had only tried to entice her with bad words; but this must be understood when the woman would be found in danger of falling for such solicitations (3). Concerning the absolution from such an excommunication, when it can be granted by the bishop, and when by the Pope, see what is said in chapter 20, of privileges, numbers 46, 47, and 48. III. Of the excommunications reserved to the Pope in the Bulla Cænæ. 53. The principal excommunication in this bulla is against heretics and their supporters, and those who read their books. Therefore, heretics incur the aforementioned excommunication first; but to incur it, it is required that the heretic be formal, namely, from an error of understanding, and with pertinacity, so that someone wishes to embrace that opinion, notwithstanding that he knows that it is contrary to the doctrine of the Church, as teaches St. Thomas (4) in common. It is said, "notwithstanding that he knows," because ignorance, even if supine, excuses from this censure; for then that pertinacity is lacking which constitutes formal heresy. Indeed, as Suar, Azor, Castres, Salmanticenses, Bannus, Sayr, etc., reasonably say, even affected ignorance excuses, when one does not contradict the Church, who does not know that he is contradicting the Church; whatever ignorance he may have of this (5). But if someone doubts about matters of faith, positively judging that some dogma is doubtful, certainly he incurs the censure as a heretic; as commonly say Sanch, Vasquez, Bonaventure, Salmanticenses, from chapter 1 (1) Book 7, number 275. (2) Ibid., v. V. If a Prelate. (3) Ibid., v. VI. If he is struck. (4) Part 1, question 32, article 4. (5) Book 7, number 301.

[*Latin ed. p. 598*]

586. TRACTATE XIX. ON CENSURES AND IRREGULARITIES. Concerning Heretics. He who doubts, but does not judge, but suspends judgment, sins, but does not incur a censure, because then there is no stubborn choice against what the Church believes; thus, Canus, St. Becanus, Salm, Tanner, etc. (1). It is required that the error be manifested by words or signs, either by itself or by circumstances, clearly demonstrating heresy; therefore, Laym. and Salm. say that one does not incur a censure who says: "There is no God," while remaining silent about Jesus Christ (2). It is required that the manifestation be, in itself, sinful; therefore, one does not incur a censure who manifests his error with the intention of explaining his views. It is required that he himself manifest his heresy with the intention of professing it; otherwise, as in this case and in other cases in which censure is not incurred, a heretic can be absolved by any confessor (3). Furthermore, to incur excommunication, it suffices that the error be externally manifested, even if it is not known to others; Azor, Avil, Corin, etc., with commentary (4). And it is clear from the practice of some faculties that the Pope often grants to missionaries; for he often grants the faculty of absolving from heresy, provided that the accomplice is not present, which,

in other cases, is not an external manifestation of heresy and is unknown to anyone. 54. Secondly, they incur this excommunication, as expressed in the bull, "Credentes, fautores, receptatores et defensores." Those who are called "Credentes" are those who externally show that they consent to errors, by saying, for example, "I believe what Calvin believes," or "Calvin was a saint." "Fautores" are those who praise the heretic, or who assist him in escaping, if they can; or who fail to punish him, when they are bound to do so by their office. "Receptatores" are those who receive the heretic into their homes, or who hide him, so that he may not be punished. "Defensores" are those who prevent the judge from seizing or punishing the heretic; or who defend the errors of others, even if they inwardly believe and think otherwise (5). Tolet, Castr., etc., say that such "fautores" incur excommunication, even if they do not do so with the intention of favoring heresy, but in order to help a relative or friend. But Sot., Azor., Laym., Salm., Arriag., and Sanch., with St. Bonaventure, probably deny this, because the Church condemns these "fautores" insofar as they favor the heretic, not as a relative or friend (6). If the "fautor" already assists the heretic with the intention of rescuing him from the hands of the judge, even if he is later caught, he is not excused from censure, as rightly say Sayr., Graff., Castrop., and others (against Sanch. and Suar.), because it is already verified that he favors heresy with intention (7). 55. Thirdly, they incur excommunication, as it is said in the bull, "scienter retinentes, legentes, imprimentes et defendentes" the books of heretics, which treat of religion, or which contain heresy, "from which, by any means, whether public or hidden, by any artifice or pretense." And Salm. says that those who sell, buy, or transport these books, or who prevent them from being delivered to the bishop, also incur (juxta decreta pontificia) (8). It is asked whether bishops can read prohibited books? It seemed possible, since all bishops, where there is no formal tribunal of the Holy Office, are born inquisitors who can proceed in the ordinary way against those who are guilty in matters of faith. But it must be denied, with Silvio, Barbos., and Bonac. (9), from the bulls of Julius III, "Cum meditatio," and Paul IV, (1) Lib. 7, n. 502. — (2) N. 305. — (3) N. 304. — (4) N. 305. — (5) N. 306. — (6) N. 307. — (7) N. 308. — (8) N. 281 and 285. — (9) Sylv., t. 5, q. XI, a. 3, quær. IV, conel. 2, in fin. Barb., de pot. episc., p. 5, Alleg. 90, n. 8. Bonac., t. 5, disp. r., qu. 2, p. 4, n. 10.

[*Latin ed. p. 599*]

OF THE PAPAL RESERVED EXCOMMUNICATION IN THE BULL. 587 Because in the future, and in the Bull *Cum pro munere* of Pope Pius IV, which was issued with the consent of the aforementioned authorities, it is stipulated that both bishops and inquisitors are prohibited from reading forbidden books; "except for the senior officials and commissaries" of the heretical sect. "Commissaries" are understood to be those inquisitors to whom, when a particular case is assigned, it is permitted to read books

pertaining to that matter, but only for the time that the commission lasts, as Bonacina explains in the cited passage: "Except for the inquisitors and commissaries appointed for a time, during that appointed time." And here, in passing, it should be noted that in the aforementioned Bull *Cum pro munere* of Pope Pius IV, it is prescribed that forbidden books not only cannot be possessed, but also cannot be torn, or burned, but must be delivered to the inquisitors, or bishops, where the Tribunal of the Holy Office is not present. 56. — However, to incur this censure, four conditions are required: I. that the books are read or possessed knowingly; hence, ignorance, even gross and feigned, is excused, as stated in n. 8. But it is not excused for one who reads, etc., a book, knowing that, according to the testimony of a single credible witness, the book is forbidden, as Lug, Sanch, Bon, Croix, etc., commonly say (1). II. It is required that the author be a heretic; hence, it is not sufficient that he be an infidel; Suar, Sanch, Castr, Salm, etc. The Talmud, and others of the Hebrew nation, are forbidden by the Bulls of Pope Pius V and Pope Clement VIII. Holzm, rightly states that those who openly act in matters of heresy should also be considered heretics, even if they use a tacit name; for their author must certainly be considered a heretic (2). 57. — It is required that the book of the heretic either treat of religion, or contain some heresy; therefore, it is sufficient that it contain only one error against the faith, even if it does not treat of religion, as Sanch, Castr, Salm, and Bon rightly say (whatever Busemb and others may say) (3), or that it treat openly of religion, or of dogmas, or of canons, or of rites, or of spiritual matters. Croix, with Pignat, says that one is excused who erases an error from a book, and reads the rest; because the book no longer contains heresy. But Suar, Bon, and Sanch oppose this, saying that this particular erasure does not remove the general prohibition of the book. Father Sporer's distinction amuses me. If the book treats openly of religion, even if an erasure is made, the book remains forbidden, according to the Bull which prohibits all books of heretics that treat of religion. On the other hand, if the book deals with indifferent matters, such as philosophy, or history, except for the history of centures, or the like, which in substance also deals with religion. Commonly, Suar, Tol, Castr, Croix, etc., say that one incurs the censure who reads such forbidden books without permission, even to refute errors; and although without the danger of perversion, since they are forbidden by the Bull for any reason or pretext; however, Laym, Dicast, Holzm, Elbel, etc., make an exception if a learned person were to read, in order to convince or convert a particular heretic, and if there was no time for obtaining permission (4). This permission must be obtained from the Pope, or from the Sacred Congregation of the Index, or from the Council; but only in cases of great necessity, says Father Viva, can the bishop grant it (5). (1) Lib. 7, p. 296. — (2) N. 282. — (3) N. 283. — (4)

Ibid., in fine. — (5) N. 299. 7. Facultatem.

[*Latin ed. p. 600*]

588. TRACTATE XIX. ON CENSURES AND IRREGULARITIES. 58.—IV. It is required that the reading material be of a notable nature; for the doctors commonly admit that a small amount of material is permissible. This small amount, as Sanchez, Vives, etc., state, can be as little as one page; but this opinion is too lax. Others, as Graffin and Reginald state, consider it to be three or four verses. Finally, others, as Marchant, Holzmann, Sporer, Elben, and Croix, make a better distinction, considering the purpose of the prohibition, and state that if heresy is encountered when opening a book, a censure can be incurred even by reading a few verses, since there may be a danger of perversion; otherwise, if the material is about another subject without any error (1). Furthermore, a censure can be incurred by reading only the preface, or index, or introduction, if the quantity read is notable; Layman, Bona, and Busembach (2). 59.—It is asked here: 1. Does one incur a censure by hearing another read aloud at their command? Azor, Silva, Pignat, etc., affirm this. But it is more probable that Navar, Conine, Sanchez, Castropal, Filliuc, and Viva deny it; and Sporer and Stephen also excuse from sin if those who hear are not in danger of perversion (3). It is asked: 2. Does one incur a censure by reading a letter, or a sermon, separately printed? Suarez affirms this. But it is more commonly and probably denied by Layman, Sanchez, Busembach, Holzmann, Marchant, Salm, Bona, Castropal, and Lugo, because such a writing cannot be called a book; and when it concerns a hateful subject, namely, a penalty, it must be strictly interpreted (4). It is asked: 3. Does one incur excommunication by reading the manuscripts of heretics? Azor, Viva, Sporer, etc., deny this, as does Silva, who also refers to a declaration of the Sacred Congregation. But Suarez, Pignat, Sanchez, Croix, Holzmann, and others constantly affirm it, stating that manuscripts also fall under the name of books, just as books were called before the invention of the printing press, and now books are called the books in which the baptized, confirmed, etc., are recorded in the ritual books, as well as the books of admissions and donations, the books of registers, etc. And it is answered that according to the decree of the Sacred Congregation, it is not sufficiently clear, as Croix and Salamanca state; otherwise, it is noted in the Roman Index that all writings of heretics are generally prohibited under pain of excommunication, until they are approved by bishops (5). It should be noted, however, that Benedict XIV, in all the books he prohibited, also included manuscripts, as can be seen in his bulls. Also, when a certain manuscript dissertation against a bull issued by him on the Unigenitus bull was published, he also prohibited it. Furthermore, he declared that a book prohibited in one language is understood to be prohibited in any other language in which it is translated. 60.—The following are not prohibited: 1. Books of Catholics that recount the words

of a heretic, in order to refute him; Suarez, Layman, Navar, Sanchez, etc., commonly (6). 2. Books of Catholics, in which there are notes of a heretic; provided that (as P. Suarez, Pignat, etc., rightly limit) such annotations, or scholia, are not so copious that they rather constitute the book than the author's writing (7). 3. Philosophical books of heretics, or of another subject, but free from errors; for (as we said in n. 57), even if there is a certain error written therein, it is already prohibited, whatever Busembach and others may say. 61.—Here, some information is given about the index of prohibited books issued by order of Paul IV, and also approved by Clement VIII. (1) Lib. 7. d. 284. — (2) N. 299. — (3) Ibid. — (4) N. 293. — (5) Ibid. — (6) N. 296. — (7) Ibid.

[*Latin ed. p. 601*]

OF PAPAL RESERVED EXCOMMUNICATIONS IN THE BULL. 589 This index establishes three classes of books. The first consists of books by heretics which contain (as has been said) heresy, or which treat of religion. The second consists of Catholic books, but which contain some error, or are contrary to the faith, or contrary to good morals; but these are not prohibited, unless they are noted in the index, as the most learned Lupo says, provided that they are not those which are generally prohibited by the index. The third consists of books which are circulated without the author's permission, and these, as the same Lupo says, are not prohibited, unless they contain some false doctrine: and all the less so if they are published with the approval of the ordinary, as is commonly seen to be the case today. Furthermore, all books by heresiarchs are prohibited, even if they do not treat of religion. Also, books by heretics (as we mentioned above) are prohibited until they are permitted by the bishops: vernacular Bibles, and books which are written in the vernacular languages about questions with heretics; magic and obscene books, and also those about judicial astrology, in which Sixtus V imposed a reserved excommunication. And also, all writings which have been condemned as suspect of heresy, or of false dogma, are prohibited under excommunication, but not a reserved excommunication, as Pignat and Suar say (1), although Salm refers to St. Pius V having reserved such an excommunication for himself. 62.—Under the force of the bull, excommunication is incurred not only by those who read, but also by those who retain the aforementioned books of heretics. Those who might have them are bound to deliver them to the bishop, or to the inquisitors, according to the precept of Julius III and Pius IV. And speaking of places where the Inquisition is established, P. Suar says, along with others, that one would incur censure if he gave them to the flames; but Sanch, Pignat, Salm, and Croix excuse this, saying that one who burns a book cannot be said to be holding the book (2). Indeed, Benedict XIV, when condemning certain books, ordered that they be either delivered or burned. Furthermore, one is not excused who retains a book in another's

name, whether as a pledge, or by loan, or by deposit; nor who holds it with another, because since he retains ownership, it is also said that he retains it, since he can, at will, reclaim it: Suar, Sanch, and others commonly say. And here is noted proposition 45 from the condemnations of Alexander VII, which said: "Prohibited books, until they are purged, can be retained, etc.';" but Croix and others say that one would be excused who replaced the book in a sequestered place, which is usually assigned in any monastery. And I would not condemn one who delivered a book to someone who has a license, with the agreement that he would not reclaim it again until after it has been purged, or after obtaining a license (3). One would also be excused who retains a book for a short time, for example, for one or two days; so Laym, Sanch, Sayr, Bon, and others commonly say. And Castr and Viva admit this, as far as excusing him from censure, even if during that short time he had the intention of always retaining it; because, as they say, there is then no serious matter of fact. Furthermore, Laym, Pignat, Sayr, Sanch, Graff, etc., also excuse him if he retains the book for a longer time, waiting for an opportune time to deliver it to a superior or to another who has a license (4). 63.—Many others, besides the aforementioned case of heresy, are cases under the bull *Cæna*, to which excommunication is attached. It is expedient here to begin—(1) Lib. 7, n. 589 and 589. — (2) N. 299. — (3) N. 298. — (4) N. 295.

[*Latin ed. p. 602*]

TRACTATE XIX. ON CENSURES AND IRREGULARITIES.

590. The following are to be noted: Those who seize the goods of shipwrecked members of Christ's flock, even if found on the shore, unless they are treated as abandoned property. Lords who impose taxes on their lands without a privilege: Such a privilege is held by kings, republics, and even universities, when it is expedient for meeting the needs of citizens; thus Vasquez, Dicast. Salm., Viva, etc. Pirates who plunder Christians at sea within the ecclesiastical domain. Forgers of apostolic letters. Those who divert spiritual causes from ecclesiastical judges, or bring a cleric before a lay tribunal in Clairac. Those who usurp jurisdiction or the fruits of benefices. Those who harass travelers or those returning to Rome for business related to the Apostolic See. Other, less common cases may be found in the work (1); but it should be noted here that Clement VIII imposed a reserved excommunication on those who absolve from the censures of the Bull of Celibacy without the proper authority (2).

POINT IV. ON SUSPENSION, DEGRADATION OR DEPOSITION, INTERDICT, AND CESSATION FROM DIVINE THINGS.

64, 65, and 66. I. On Suspension. — 67. II. On Deposition and Degradation. — 68, 69, and 70. III. On Interdict. — 71. IV. On Cession from Divine

Things. 64. — And I. On Suspension. Suspension is "a censure by which a cleric is prohibited from exercising certain ecclesiastical functions." It is certainly a grave sin for a cleric to exercise a function that has been forbidden to him by suspension, unless he has a valid excuse, either because he is exercising a non-sacramental function, or a sacramental function, but not solemnly, as taught by St. Antoninus, Habert, Tourn., Salm., etc., against Suarez and Navarez, or because he is exercising it out of ignorance or grave fear, or in a trivial matter; Bonac., Tourn., Salm., etc. (3).

Here are some questions: 1. Does a cleric incur an irregularity by exercising an act from which he is suspended? There are many opinions on this matter; but the one that appeals most to me, along with Roncatius and others, makes this distinction: if the suspension is imposed as a statute, or as a precept for a future offense, or even for a past offense, but with a continuing effect, then the guilty party incurs an irregularity, according to chapter 1 on sentences and legal matters, section 6. However, if the suspension is imposed by sentence as a punishment for a completely past offense, because then the suspension is merely a penalty, and not a censure; for a censure cannot be imposed for completely past offenses (4), as we have said in number 8.

It is asked: 2. Does a bishop suspended from pontifical functions incur an irregularity if he exercises them? Silvestri, Innocent, the Abbot, etc., deny this, saying that in such a case the bishop is not exercising a sacramental function; they base this on the opinion that the episcopate is not an order, although this is strongly opposed by Bellarmine, Sanchez, Tourn., and others (see below, Appendix 3, on Examination, chapter 2, number 27, in end). Nevertheless, it cannot be denied that such an exercise is an act of a sacramental order, albeit distinct, at least in its extent. If a suspended bishop were to celebrate a solemn Mass with pontifical vestments, we would say that he would sin, but would not incur an irregularity, because in celebrating, he is not exercising a substantial act of the episcopal order, but only of the sacerdotal order, from which he is not suspended (5).

65. A suspended cleric invalidly exercises jurisdiction. Toler- (1) Book 2, numbers 309 to 311. — (2) Number 312, in end. — (3) Number 313, v. It is certain. — (4) Number 314. — (5) Ibid. Doubt 1.

[*Latin ed. p. 603*]

DE SUSPENSION, etc. 591. He who exercises [a function] validly, but illicitly, is considered to do so when required by others; Busemb., Salm., etc. (1). Others, even if a cleric were expressly suspended, probably say, as Suar., Castr., Holzm., and Salm., that he is not bound by a grave fault to be avoided, and they add that it is altogether illicit for the faithful to hear Mass from a suspended priest (2). 66. — Suspension is either for a time; or perpetually. It is either from a benefit, or from some function of his own; or it is from office, which includes both suspension from orders and from

jurisdiction. Note 1: that an absolutely suspended person is understood to be suspended both from a benefit and from orders; Laym., Busemb., etc. Therefore, a suspended person is then forbidden from exercising any function of orders and jurisdiction. But note, with St. Thomas (3), that a person suspended from orders is not therefore suspended from jurisdiction, and so also say, with common opinion, Suar., Nav., Tourn., Fagn., etc., that a person suspended from office is not therefore suspended from a benefit, provided he fulfills the functions due to the office through others. However, this is excepted if the offense is enormous, cap. 10, de Purg., canon, or if the guilty party remains suspended for a year; cap. Cum bonae, de aetatis, etc. Note 2: that a person suspended from a benefit is not suspended from office. Therefore, he is bound to observe the canonical hours, and other obligations of the office, although deprived of the fruits. However, this is not understood when the suspension is due to a completely past offense, but when it is imposed due to contumacy, from which the suspended person can freely be released; Suar., Fill., Conin., etc., in common. Indeed, Tourn., Avil., Renzi, etc., say that if a beneficiary is secretly suspended, and fulfills the obligations, he can retain that part of the fruits which would pertain to the substitute (4). But a person suspended from a benefit by his own bishop is not understood to be suspended from other benefits which he may hold outside the diocese, provided the bishop does not express it; because then, although those benefits are not subject to the bishop, the person suspended is still subject; Tournely, Pont., and Renzi (5). We also say, with the more probable opinion of Suar., Laym., Antoine, etc., against Bonac., that if a suspended person acquires a new benefit, the collation can rightly be annulled, but it is not null in itself, since this is not expressly stated in the law: indeed, the opposite is deduced from cap. Cum bonae, de aetatis, etc. (6). Note 3: that to a person suspended from a benefit, it is not forbidden to present and confer other benefits, even if the right belongs to him by reason of the benefit itself; Bus., etc. (7). Note 4: that, in the case of a suspension of a community, the persons of that community are not understood to be suspended; but the community itself, with regard to the offices and benefits which it holds in that community, Bonac., Salm., etc., with St. Thomas, etc., in common. And if particular individuals were to exercise functions forbidden to the community, they would certainly sin, but they would not incur irregularity, because such a prohibition would not properly be a censure; Suar., Castr., Ronc., Salm., etc. But if the suspension is imposed both on the community and on the individuals, then the innocent do not incur [punishment], cap. 2, de Constit. (8). Note 5: with Nav., Bon., Salm., Busemb., etc., that if a prelate were to say orally, "I suspend you," this would rather be a prohibition than a suspension; for it is not presumed that he intends in this to commit a sin, since it is forbidden to prelates to suspend without a scriptural basis (9). Note 6: that, according to the more reliable and common opinion of Suar., Sot., Laym., Sanch., Salm.,

etc. (contra Nav.), a total suspension (1) Lib. 7, n. 324, v. 4. Suspensus. — (2) N. 458 et seq. — (3) Suppl. q. 22, n. 3. — (4) N. 316. — (5) Ibid. Dubit. 2. — (6) Ibid. Dubit. 3. — (7) Ibid. v. 6. Suspensus. — (8) N. 317, v. Quaedo. — (9) Ibid. v. 10. Si prælatus.

[*Latin ed. p. 604*]

592 TRACT. XIX. ON CENSURES AND IRREGULARITIES. Indeed, one is removed from all or some of the duties of the office, either temporarily or for a notable period; this occurs only through mortal sin; otherwise, if the suspension is partial, or total but for a short time, e.g., for a few days, or for a week, or is subject to a condition (1). It should be noted that bishops and all confessors can absolve from a suspension imposed temporarily, or conditionally; that suspension ceases by itself once the time has elapsed, or the condition has been fulfilled (2). Those who wish to know about specific suspensions imposed on those being ordained should refer to App. 3, on Examinations, etc., no. 84. General suspensions are noted in the work (3). 67.—II. On Deposition and Degradation. Deposition and degradation are not censures, but are similar to suspension; however, they differ in that they remove the fundamental right to benefices, and prohibit the exercise of the order forever, which a suspension does not effect. Deposition can be verbal; and this is properly called deposition, which leaves the privileges of canon and forum intact. Degradation, on the other hand, is properly called degradation, which deprives one of the exercise of offices, and of benefices, and of the privileges of canon and forum, with a certain solemnity, and forever, without hope of restitution. It is said "exercise," because the order itself cannot be taken away; therefore, the degraded person is bound by the vow of chastity already made, and to the canonical hours, and would enter into a marriage invalidly (4). Degradation cannot be celebrated except by a bishop, but deposition can be done even by the bishop's vicar: in deposition, the bishop can grant dispensation, but in degradation, only the Pope. Deposition cannot be done except in cases expressly stated in the law, and for more serious offenses; degradation, however, is done only for very grave crimes, namely, manifest heresy, calumny against one's own bishop, frequent sodomy (5), and similar offenses. 68.—III. On Interdict. An interdict "is a censure by which the use of divine offices is prohibited," as well as some sacraments, and ecclesiastical burial." It is divided into local, personal, and mixed. A local interdict prohibits divine offices only in a particular place; a personal interdict prohibits certain persons or a community; a mixed interdict affects both a place and persons immediately. It is also divided into general and particular. When an interdict is general, affecting a city, the suburbs are also affected, and even churches exempt from ordinary jurisdiction, and then all are bound to observe it, even the bishop who imposed it, except for the Pope. However, it is permissible for citizens who have not caused the interdict to go elsewhere to attend divine

services. With a parochial interdict, all chapels and the adjacent cemetery are understood to be included; c. If licit, by sentence of excommunication (6). With an interdict on a people, the clergy, pilgrims, and students are not included, because these are not parts of the people; nor are doctors with their communities. On the contrary, with an interdict on the clergy, lay people are not included, c. If by sentence, see sentence of excommunication in 6; nor are religious, unless they hold an office or benefice in that place; nor are other clerics who have no office there. From a general personal interdict are exempt: 1. Bishops (who are also exempt from a general suspension). 2. Infants and those deprived of reason; but these are also deprived of burial. 3. The innocent, but then they are relocated elsewhere. 4. Outsiders, even if they live there for a long time (7). (1) Lib. 7, no. 321, — (2) No. 622, — (3) No. 318, — (4) Nos. 625 and 524, — (5) Nos. 326 and 327, — (6) No. 330. — (7) No. 331.

[*Latin ed. p. 605*]

OF INTERDICTION, etc. 593 69. — The effects of an interdict are: I. Prohibition of divine offices (understood as those which can only be performed by clerics and in the designated place), to which they may not assist, nor are they excused from this prohibition because of the fault of others. However, clerics who are not under interdiction may celebrate, but with closed doors and without the ringing of bells, and those under interdiction (provided they have been notified), as stated in *Alma Mater*, concerning excommunication in 6, and if those under interdiction refuse to leave, the celebration must cease under penalty of irregularity; but Suarez, Holz, and Mazza state that this applies when the celebration takes place in the interdicted place. However, it is permitted to celebrate on the feasts of the Nativity of the Lord, Easter, Pentecost, the Assumption of the Blessed Virgin Mary, and during the octave of the Body of Christ (1). II. Prohibition of administering the sacraments, except for baptism (which can also be given solemnly), confirmation, and penance, which are permitted to all, except those who have caused or favored the interdict. However, the Eucharist can be given to the dying, and even the extreme unction, as Suarez, Croix, and the Dicastery state against Salm and Sanch. Also, Concina and Laym permit marriage, and this is more probable (contrary to Suarez), from the chapter *Capellanus, de feriis*, where it is stated that marriage can be contracted at any time (2). III. Prohibition of burial, but clerics, provided they are not specifically named in the interdict, can be buried in the church, even with a Mass: if, however, the church is specifically interdicted, they can also be buried there, but without a Mass. But laypeople cannot be buried in the church, and if they are buried there, they must be exhumed (3). IV. Clerics who violate the interdict in a serious matter sin gravely, and by exercising their office incur irregularity. Religious also incur excommunication by this very act. Laypeople sin mortally if they receive the sacraments against a

personal interdict; but if they violate only a local interdict, for example, by attending divine services, Laym, Busemb, Sot, and Silvestr, etc., more probably state that they sin only venially, provided they themselves are not specifically interdict. (4). 70. — All superiors who can excommunicate can impose an interdict. To interdict a place or community, a very grave sin is required, committed by the head or by the principal members of that place. However, an interdict for a short time, and in order to achieve one or the other purpose, can also be imposed for a venial sin (5). Local interdicts, and personal interdicts in general, issued by common law and not reserved, can be lifted by bishops. However, those issued by bishops can only be lifted by the bishops themselves or by the Pope. However, any approved confessors can absolve from personal and particular interdicts not reserved by law (6). Finally, it should be noted that divine services must be suspended in the church, and the interdict itself must be observed, as it is permitted to bring a bed to anyone who is not of royal rank, as we have already stated above, tr. 4, n. 39. 71. — IV. Concerning cessation from divine services. This is defined as a "prohibition to clerics" to abstain from divine offices and from ecclesiastical burial." Suarez and Fill. believe that a bishop can prohibit only one effect, and not another. This cessation is not an interdict, nor a censure, nor is it imposed as a medicine to remove stubbornness, but only as a sign of mourning, or to repair some very grave injury done to God, or to the Church: and all citizens of that place are bound to observe it (1). (2). (3). (4). (5). (6).

[*Latin ed. p. 606*]

TRACTATE XIX. CONCERNING CENSURES AND IRREGULARITIES. concerning the place to which it is applied. And commonly, St. Bonaventure, Salmeron, and others say that during such a suspension, clerics are deprived of the privilege granted to them during the time of the interdict; however, those sacraments are permitted which are allowed during the time of the interdict. The suspension is imposed by the one who has the power to impose censures, after a prior warning, and it can also be lifted or suspended for a certain time (1). CHAPTER III. CONCERNING IRREGULARITY. POINT I. WHAT IS IRREGULARITY, AND OF WHAT KIND IS IT? 72. Definition. — 73. Whether irregularity is a censure. — 74. Divisions of irregularity. 72. — IRREGULARITY, although it is not a censure, is nevertheless so closely related to it that it is connected to it, and is defined as: "A canonical impediment preventing the reception of sacred orders and the exercise of those already received." Therefore, an irregular person cannot either receive orders, nor exercise those already received. 73. — It is questioned whether irregularity is a censure? Some, such as Soto, Bonaventure, Covarrubias, and many others, affirm that the essence of a censure is a Church penalty, and that this applies equally to both censure and irregularity. However, others, such as Suarez, Bonaven-

ture, Castrop, and Salmeron, and others among them, more commonly and probably deny this, saying that it is an impediment or disability; and they prove this from chapter "Quærenti," concerning the signification of words, where Innocent III, when asked what is to be understood by the term "censure," responded: "That by it, not only interdicts, but also suspensions and exclusion from communion, should be understood." Therefore, besides these three, no other penalty can be called a censure (2). And although it is a penalty, it is not medicinal, that is, to prevent future sins; for this is imposed for past sins, and is a purely punitive penalty. 74. — Irregularity is divided into that which arises from a fault, and that which arises from a defect. Also, into total irregularity, which deprives one of the reception of all orders, and the exercise of those received; and partial irregularity, which deprives one only of a certain ministry of the order, or of advancement to higher orders; for example, if a priest were lacking a hand or were blind, he would be unable to celebrate Mass, but he could hear confessions. POINT II. THE EFFECTS OF IRREGULARITY. 75. Effects. — 76. Whether an irregular person can accept benefices. — 77. Whether he can retain benefices accepted. 75. — IRREGULARITY I. renders one incapable of receiving orders, even the first tonsure, as the doctors commonly teach. II. It impedes the exercise of those already received, as stated at the end of chapter "De temporibus ordinum," therefore, an irregular person would illicitly, but validly, absolve, etc. III. It prevents the reception of benefices. 76. — But with regard to benefices, it is questioned whether the collation of a benefice is valid when the person is irregular, and therefore incapable of performing the functions of that benefice? The more common and probable opinion affirms this, and it is proven from chapter 2, "De clericis non ordinatis ministrantibus," and especially from the Council of Trent, session 22, chapter 4, "De reform." (1) Book 7, page 340. — (2) Note 347. See "Quær."

[*Latin ed. p. 607*]

HOW IRREGULARITY ARISES. 595, where it is stated: "Nor shall provision be made for others in the future, unless those who already possess the necessary age" and other qualifications "are recognized to have them fully; otherwise, the provision is void." The reason is that the benefit is granted because of the office, and he who is unfit for the exercise of the order already undertaken, must also be judged unfit for the benefit; so say Suar., Bonac., Tourn., Cabass., Salm., and many others. Innoc., Silv., Laym., Viva, Elbel, Ronc., Diana, and Salm., and with Felin., Anchar., Gibal., and the same Suar., defend the opposite opinion, as Busemb. rightly calls it probable: because no penalty should be imposed where no law expressly exists, and since no clear text is present which declares an irregular person incapable of receiving benefits, therefore Suar., Tournel, and Bonac. (1) say that, although he may gravely sin in receiving or retaining them without dispensation, if he has fulfilled the obligations of the benefit through others,

he is not bound to restitution. And they respond to the canons that they themselves declare the collation of benefits to irregular persons to be illicit, but not invalid; and they respond to the Council of Trent, saying that there, the invalid collation made to qualified persons is declared, but such are not considered irregular with regard to validity. But it must be noted here that, although this opinion is probable, since the first opinion is also more probable, and given the common opinion of the doctors, as Laym. says, who is the best interpreter of laws, who have interpreted the texts cited above, one cannot therefore enter into possession of a benefit, because no one with a probable opinion can intrude upon the possession of another's property (2). But on the contrary, if he had received the benefit in good faith, having obtained a dispensation, he may retain it, even if mention of the benefit was not made in the petition for dispensation (3). 77. — It is asked: 2. Can an irregular person, according to the aforementioned opinion, retain a benefit for himself? Regarding benefits previously obtained, there is no doubt that he can; nor should he be deprived of them by a judge, if the irregularity arises from infirmity, as is stated in chapter Ex parte, de cler. ægrot. But if the irregularity arises from a fault, he must be deprived of it by the judge; but in the meantime, unless he obtains a dispensation, he must either renounce it, or resign it at least in favor of a third party; because he who cannot lawfully fulfill the obligations of a benefit, cannot lawfully retain it for himself; so say Suar., Castrop., Salm., and many others (4). POINT III. HOW IRREGULARITY ARISES. 78. Irregularity must be expressed in the law. — 79. He who doubts whether he is irregular. — 80. He who does not doubt whether he is a murderer. — 81. What is required for irregularity arising from a fault. — 82. If the fault is entirely hidden. — 83. Is knowledge of the law required? — 84. Is knowledge of the irregularity required? — 85. How is irregularity in general removed? — 86. Concerning dispensation. — 87. How is irregularity arising from a defect removed? 78. — IRREGULARITY DOES NOT ARISE, unless it is expressed in the law, cap. Is qui, from the sentence of excommunication, ip. 6, where it is stated: "Since this is not expressly stated in the law, etc." Therefore, it should not be extended beyond the cases expressly stated. By the term "law," only pontifical law or councils approved by the Pope are understood. Hence, it is inferred that in matters of irregularity, the argument from the similar, or from the greater to the less, is not valid, as the doctors commonly point out. Laym. notes, however, that in doubt as to whether some irregularity exists or not, (1) Lib. 7. n. 343. — (2) Ibid. in fine, and lib. 3. n. 761. — (3) Lib. 7. n. 348. — (4) Ibid. v. Quor.

[*Latin ed. p. 608*]

TRACTATE XIX. CONCERNING CENSURES AND IRREGULARITIES. When a matter is brought before a court, it is the opinion of the common doctors and the established practice to adhere to the common understand-

ing (1).

79. — It is asked: 1. Should a person who doubts whether he is irregular be considered irregular? In this context, "doubt" refers to a negative doubt, because if there were a positive doubt, each person should consider himself irregular, according to Sanch., Suar., Castr., and Salm. (citing the Council concerning excommunicated clerics), unless there is a grave and urgent necessity, such as the initiation of orders or the acceptance of a benefice; in such a case, with sufficient diligence, he can be considered not irregular; according to Suar., Castr., and Salm., among others. Therefore, the difficulty remains in the case of a negative doubt, and the answer is that if the doubt concerns the law, namely, whether a law exists that considers a certain act as an irregularity, then the person should not be considered irregular in any forum, both because of what was said in the preceding number, and because in a doubt, no one should be deprived of his rights; this is the common opinion of Sanchez, Suar., Castropal., Tourn., Habert, etc. (2). If the doubt concerns the fact, namely, whether the person committed the act (except for homicide, which is discussed below), there are two opinions. The first opinion affirms, with Concini, Tourn., Habert, etc., based on the reasoning accepted regarding homicide, as stated in chapter "To the Hearing, concerning homicide": "Since we must choose the safer path in doubts, it is fitting to enjoin the aforementioned priest not to minister in the sacred orders." And from this, they establish a general rule to follow the safer course in all matters. The second opinion, which is the common and truer one, denies this, and the proponents of this opinion are Suar., Cabass., Ronc., Castr., etc., and Salm., among many others. The reason is that suspicions must be restrained, and in a doubt, no one should be condemned. Thus, according to the rule "Favorabiliores," in the sections concerning legal rules, and in chapter "When," in the same title, number 6, it is stated: "When the laws of the parties are obscure, the defendant should be favored rather than the plaintiff." And the reason is derived from what we said above: for if there is doubt whether the disposition concerning homicide applies to other matters, then there is a doubt of the law, in which doubt even the adversaries concede that the person does not incur the irregularity, as is declared in chapter "Those who," concerning sentences of excommunication, number 6, that no irregularity is incurred unless it is expressly stated in the law; and in chapter "To the Hearing," it is answered that the Pope intended to use the motive of decency, which befits the dignity of so great a sacrifice, so that he who doubts whether he is a homicide should be repelled from the altar; and that this was a matter of decency and not of precept, is evident from chapter "Your Petition, concerning homicide," where it is stated: "Since it is more prudent in such a doubt (of homicide) to abstain than to celebrate rashly." Regarding this matter, it was the Pope's intention that in this place, the advice should be transferred to a precept in another chapter (3).

80. — It is asked: 1. Should a person who doubts whether he is a homicide always be considered irregular? Some say that he should act as if he were irregular in the external forum, but not in the internal forum; thus, Innoc., Salm., Sanch., etc. Others say that he should always be considered irregular in neither forum, Host., Arm., Tamb., etc.; but the common and truer opinion, held by Castr., Bonac., Bon., Sanchez, and Salm., among many others, is that he should be considered irregular in both forums. The reason given in chapter "You Have Signified, to the Hearing," and in the penultimate section of "Homicide," namely, that in a doubt, the safer course should be chosen, applies to both forums. It should be noted first that this applies when homicide is certain, and only the question is whether the action of the aggressor was the cause of it. If, however, there is doubt whether the homicide was committed or not,

(1) Book 7, number 46. — (a) Number 546. — (3) Number 547.

[*Latin ed. p. 609*]

HOW IRREGULARITY ARISES. 597. Pichl, Elbel, Diana Veteranorum, Tambovius, and Sporer rightly state that it should not be considered an irregularity. Therefore, Diana Veteranorum says, citing Navarrelius, Menochius, and Quatremère, that if a physician severs a pregnant woman's artery to cause an abortion, and afterward does not know whether an abortion occurred or not, he should not be considered irregular, because, as stated in book 1, section [omitted], it is also stated in *Ad Syllam* that one should not proceed to punishment unless the corpus delicti is established. Conversely, if medicines are so effective that a certain effect is commonly produced by them, as Navarrelius states from the last book of *De Instrumentis Fidei*, see the aforementioned treatise, section 8, number 22. Secondly, it should be noted that one who doubts whether he has committed homicide should act as if he has committed it in two respects: namely, by abstaining from celebrating the sacraments, and by seeking a dispensation. Therefore, it follows that 1. a layman would not incur such an irregularity; Salmeron and Roncaglia state this. 2. A cleric would not incur the deprivation of his benefice; Sanchez, Suarrez, Roncaglia, Salmeron, and Castropius, along with Panoranus, etc., state this. 3. One who doubts whether he has committed mutilation is not considered irregular; Sanchez, Bonaventure, Roncaglia, Salmeron, and Suarez state this, contrary to Navarrelius and Henricus. (1). 81. To incur an irregularity from a crime, the act must be external and mortal; because irregularity is a serious penalty for which relaxation is difficult. Therefore, it follows that 1. if an act is excused from mortal sin due to certain circumstances, it is also excused from irregularity. 2. A precept that obligates under a penalty of irregularity obligates to a grave sin. 3. The act must be external; therefore, when it is said to dispense in a mental irregularity, it is understood to be an external act; Castratus, Conciliarius, Averroes, and the common

opinion agree with Salmeron. 4. The act must be consummated (2). 82. Here, it is asked 1. Whether an irregularity is incurred for a crime that is externally consummated, but entirely hidden? Three opinions exist, but the more probable one affirms that it occurs for every crime, because the Church reserves even the most hidden crimes to herself, as is the case with a completely hidden heresy (as stated in number 53 at the end). And it is evident that an irregularity is incurred for hidden crimes from the decree of the Council of Trent, session 24, chapter 6, which allows bishops the power to absolve from hidden irregularities, and among these, hidden heresy and homicide are mentioned; and just as excommunication is incurred for hidden heresy and homicide, so it should be said for other crimes (3). See below, in *Privilegia*, numbers 51, 52, 106, and following, for information on who can dispense in these cases. 83. It is asked 2. Whether knowledge of ecclesiastical law prohibiting the act is required to incur an irregularity? The more probable and common opinion (contrary to Suarez, Azorín, Holzmüller, and Felino) affirms, along with St. Antoninus, Roncaglia, Castropius, Navarrelius, Silvaneus, Sanchez, and Salmanticensis, along with many others, that such an irregularity has the nature of a penalty; and since it is a penalty, knowledge is required, at least of the prohibiting law. This is proven from *Proposuisti*, district 42, where Innocent I decreed that certain incontinent clerics should not be deposed because they were ignorant of the constitution of Pope Siricius; therefore, Castropius, Viva, and Salmanticensis, along with others, state that if someone were even ignorant that homicide was attached to an irregularity, and committed homicide, he would not be irregular, not because of the crime, since knowledge is required; not because of a defect, because this only applies to ministers of justice, or of the cause, or of the execution of the penalty. Nevertheless, with regard to homicide, a sufficiently probable and tenable opinion is that it does incur an irregularity, because this irregularity does not only concern the crime or the defect, but also the in- (1) Book 7, number 547, doubt 5. — (2) Number 548. — (3) Number 549.

[*Latin ed. p. 610*]

TRACTATE XIX. ON CENSURES AND IRREGULARITIES.

The offense [committed by a cleric] diminishes the dignity of the priesthood; for it admits to the altar, through the hands of a wicked minister, the most gentle Lamb [Christ] to those who are credulous. Therefore, in Session 14 of the Council of Trent, canon 7, before reserving the censure of excommunication for homicide, it states that the homicidal person must be removed from the altar: "For even he who kills another by design shall be cut off from the altar" (taken from Exodus 21:20). Who can deny that the Council indicates that such ministers should even be forcibly removed from the altar (1)? Nevertheless, I do not dare to condemn the opposite

opinion, as this case is not expressly stated in the law.

84. Question 3: Is knowledge of the ecclesiastical prohibition sufficient, or is knowledge of the irregularity itself required? There are two opinions: the first, held by Suarez, Layman, Croix, Tournel, Pontius, Soto, Vasquez, and others, denies this, arguing that irregularity is not a medicinal penalty, but an impediment or a purely punitive penalty. Therefore, it is sufficient that such a penalty has been imposed by law for that act, and that the guilty party knowingly and culpably committed it. The second, equally probable, affirms that irregularity resulting from a sin, since it is a true and extraordinary penalty, and therefore cannot be foreseen, and is usually at least vaguely known as an ordinary penalty, the Church does not wish to punish ignorance to such an extent (2). This is the view held by Sylvester, Sanchez, Roncaglia, Bossuet, Concinius, Sayr, Cornejo, Rodriguez, and Salamanca. Suarez also considers this opinion probable.

85. Irregularity can be removed in many ways. I. If the cause ceases, since irregularity arises from a defect, e.g., age, ignorance, etc. (Suarez, Layman, Tournel, etc.). If, however, the irregularity arises from infamy, if it is public, it is removed by amendment, according to canon 4 and 18 of Dist. 56. If the infamy is due to a specific act, it is removed by changing location (Tournel and Roncaglia); but if the infamy is legal, that is, by a judicial sentence, a dispensation is required. II. If it arises from a sin, it is removed by baptism; therefore, one who committed homicide before baptism will no longer be irregular (Salamanca, with Concinius and Layman). III. By the dispensation of the Pope. IV. By religious profession (3). When and in what cases can bishops and religious grant dispensations? See treatise 20, paragraphs 51, 106, and following.

86. Several things must be noted regarding dispensation. I. A dispensation from the Pope without a cause is valid, but illicit; a dispensation from an inferior is invalid. II. If someone incurs multiple irregularities of the same type, in granting dispensation, it is sufficient to state that they have incurred it multiple times. III. If a prelate who has the power to grant dispensations knowingly admits an irregular person to a benefice, he is considered to be granting a dispensation to that person (Bonacini, Salamanca, and others). (4)

87. Only the Pope can grant a dispensation for an irregularity arising from a defect, and he who has this special privilege. An irregularity arising from a defect of birth can be removed by religious profession, with regard to orders, but not with regard to prelacies; so say the common doctors, both from c. 1 de Fil. presbyt., and from the concessions of Gregory XIV, Clement VIII, and Paul V. However, Diaz, Barbieri, Castres, and others say that regular prelates can grant dispensations for prelacies in general or provincial chapters. A prelacy does not confer the episcopate (Bonacini and Tournel). Furthermore, all the doctors (except Soto) say that it is not true

that a religious profession removes an irregularity with regard to prelacies.

(1) Book 3, number 350.

(2) Number 351.

(3) Number 352.

(4) Number 353. Note this.

[*Latin ed. p. 611*]

OF IRREGULARITIES ARISING FROM DELICTS. 599. All irregularities are removed by a canonical penalty (1). Regarding other privileges of religious, see treatise 20, on Privileges, nos. 106 and following. POINT IV. WHAT ARE IRREGULARITIES ARISING FROM DELICTS? 88. I. Due to the Sacrament. — 89. II. Due to a violation of censure. — 90. III. Due to the solemn exercise of an office, etc. — 91. IV. Due to illicit reception into an order. — 92. V. Due to enormous crimes. — 93. VI. Due to homicide. — 94, 95, and 96. Concerning voluntary homicide. — 97 and 98. Concerning those who command, those who give counsel, etc. — 99. Concerning those who cooperate. — 100. Concerning those who ratify. — 101. Concerning those who do not prevent. — 102 to 105. Concerning accidental homicide. — 106. He who kills in defense. — 107. He who kills to protect property. — 108. Concerning homicide in a brawl. — 109 and 110. Concerning mutilation. — 111. Concerning dispensation, remission. 88. — The first irregularity arises due to the Sacrament of Baptism not being received properly; therefore, the following are irregular: 1. He who, without necessity, receives Baptism from a heretic, canon. *Placuit*, question 4. But it is understood if he received it in adult age; for the Sacred Congregation declared on May 21, 1716, that a child baptized by a heretic is not irregular. 2. The son of a heretic, chapter *Statutum*, on heretics, no. 6. But if the parents afterwards convert to the Catholic faith, the irregularity is removed, Suar. d. 43, section 3, etc.; and thus the Sacred Congregation declared on the aforementioned day. 3. He who delays Baptism until the point of danger of death, chapter *Si quis*, d. 57. 4. He who knowingly is baptized solemnly a second time, and both the rebaptized person, if an adult, incur the penalty of chapter *Confirmandum*, dist. 50, as well as the one who rebaptizes, according to the common opinion of doctors from chapter *Et litterarum*, where it is declared that an acolyte assisting at the rebaptism is irregular. Doctors excuse if this happened out of fear, but no one is excused if he does it out of culpable ignorance, canon. *Quibus*, on councils, d. 4. 89. — The second irregularity arises due to a violation of censure, when someone who is bound by a censure solemnly exercises a sacred office. It is said to be solemnly exercised, for example, if a deacon sings the Gospel with a stole and manubrium, or if a cantor, acting as a hebdomadarian in the choir, sings: "The Lord be with you." And if that person were bound by a double censure, he would incur one irregularity equivalent to two; but this must be expressed in the petition for dispensation, Tourn., etc. (3). It

should be noted that he would not be irregular who was only bound by a minor excommunication, chapter *Si celeb.* on clerics excommunicated *minor*. Nor is he irregular who exercises minor orders, even solemnly; Laym. Navar. Salm., etc.; and on this point, it seems that there is no longer any doubt after the bull *Et si Pastoralis* of Benedict XIV (in volume 1) on dogmas and rites of the Italo-Greeks, etc., where § 7, no. 9, it is said: "Those who are promoted to the first tonsure" or to any other order without dispensation, etc., are suspended," and if those who are suspended minister in the sacred orders, they become irregular," just as the Latins. Nor is he irregular who preaches, nor who exercises acts of jurisdiction, namely, excommunicating, approving confessors, granting benefices, assisting, or granting permission to assist at marriage to another (4). Nor does he become irregular who celebrates in a polluted church; rather, he becomes irregular who celebrates in a place under interdict, chapter *Is qui*, on sentences of excommunication, no. 6. Conversely, it should be noted that a bishop, or another priest who would force a censured person to celebrate, would become irregular, chapter *Illud*, on clerics under excommunication *minor*. But they can grant dispensation (1) Lib. 7, no. 354. — (2) No. 356. — (3) No. 357. — (4) No. 348 to 2, and no. 358.

[*Latin ed. p. 612*]

SECTION XIX. OF CENSURES AND IRREGULARITIES.

600. Regular prelates, even if holding public offices, and even those in communion with secular authorities, are subject to the censures established by the privileges of Martin V and Julius II (1).

90. A third type of irregularity arises when a cleric exercises a sacred office which he does not possess, as stated in chapter 1 of "De Clericis Non Ordinatis," for example, if a cleric who has not been initiated into the diaconate were to celebrate the Mass with a stole, or to administer the Sacrament of Baptism solemnly, etc. However, it is stated that a layman performing such functions does not, in all probability, incur an irregularity (2).

91. A fourth type of irregularity arises due to the improperly received sacraments; therefore, one is irregular who is ordained by a bishop who is suspended, a heretic, a schismatic, or a simoniac, as stated in chapter "Quod quidem," and in canon 1, question 1, and chapter 1 and 7 of "De Schismatibus," where it is stated that a dispensation is required for such ordinations. Furthermore, it is evident from the cited bull and from the Pastoral of Benedict XIV, § cited, no. 15, where it is stated that those ordained by schismatic bishops "should not minister, unless a dispensation has been granted by the Apostolic See regarding this irregularity."

2. Those who are initiated into the sacred orders while under excommu-

nication or suspension, or who obtain promotion from a bishop who is not their proper ordinary, or who are ordained by "jumping" the ranks (Avila, Navar, Bonacini, and Busembach state that such a person is only suspended from the exercise of the received order), or who are dismissed before the canonical age, or without a dismissal letter, are considered by the Doctors to have received "surreptitious" ordinations. However, Suarez, Castrop, and Salm state that these are more properly considered suspensions, to prevent advancement to higher orders; they do, however, maintain that absolution can be obtained from the Pope.

3. Irregularities arise from surreptitious ordinations in the following cases: 1. One who is ordained without the approval of the bishop, as stated in chapter 3 of "De Eo Qui Furt." 2. One who receives multiple orders on the same day, one of which is the priesthood, without a dispensation from the Pope, as stated in chapters 2 and 3 of the same title. 3. One who receives the sacrament of Holy Orders after a valid marriage, against the will of his wife, as stated in "Extravagantes," "Antiqua," regarding vows (3).

92. A fifth type of irregularity arises due to grave crimes, if they are notorious and induce infamy according to law, such as adultery, incest, perjury in court, heresy, concubinage, sodomy, etc., as stated in chapter "Infames," question 1. To incur this irregularity, it is necessary that the crime be notorious, both in the fact itself and according to the law. Notoriety of fact is said to exist when the offense is so evident that it cannot be concealed by any prevarication; therefore, it is required that it be known to at least ten people. Infamy according to the law is held to exist either by the confession of the crime, or by the sentence of a judge, at least declaring the crime (Sanchez, Castrop, and others (4)). However, this irregularity is removed by baptism, or by a notorious amendment lasting at least three years (5). But if the infamy arises from a sentence of a judge, it can be removed by another sentence, by which the fame lost to the accused is restored (6).

93. A sixth type of irregularity arises from homicide, or from unjust mutilation. This applies to homicide whether it is voluntary, namely, directly intended, or indirect, in the proximate cause of the homicide, such as by giving poison; it also applies to homicide that is accidental, namely, intended in the cause, but not in the proximate cause of the homicide, provided that it was foreseen, and not prevented by grave culpability (7). It should be noted that whatever is said about homicide applies to mutilation (7).

94. Regarding voluntary homicide, it is certain that those who commit it are irregular (1) Lib. 7, no. 342 ad 2, and no. 358, v. Notes II and III. (2) No. 359. (3) No. 360 and 361. (4) No. 363. (5) No. 364. (6) Ibid., v. Episcopus. (7) No. 365 and 366.

[*Latin ed. p. 613*]

OF IRREGULARITY ARISING FROM A DELICT. 601. All those who are

the immediate cause of the death of another are irregular, unless otherwise specified. *Homic. et Trid., sess. 14, c. 7, 95.*—It is questioned whether a murderer, before the one struck dies, is excused from irregularity if he repents. The negative answer is given by Sanch. and Vivæ (contra Salm.), with the more probable opinion, because the physical cause, voluntarily set in motion, necessarily operates; therefore, just as it is not within the murderer's power to prevent poison from causing death, so too, he cannot prevent the effect of his action. Therefore, Suar. rightly does not excuse one who commands an action from irregularity, if, by chance, the revocation of the command does not reach the one commanded (1). 96.—It is questioned whether one who was the first to inflict a lethal wound is irregular, if the wounded person is subsequently killed by another. Fagnan, Covar., and Ugol. affirm this, citing the argument from *Significasti*, where the Pope responded that the one who inflicted a light wound was not irregular; on the other hand, the one who inflicted a lethal wound was irregular. Laym., Bonacin., Avil., Coninch., Molin., and Escob., with Henriq., object, arguing that *Significasti* does not apply to our case; for there, both had struck, and it was unknown whose wound caused the death, therefore, it was responded that if the first had inflicted only a light wound, he was not irregular. But in our case, although the first inflicted a lethal wound, the death was certainly caused by another; therefore, in the absence of a definitive judgment, he may be excused. However, this does not apply if it is known that the second only accelerated the death, but that the person would have died even without the second's action; for example, if the first inflicted a very serious wound to the head, etc., then he could not be excused from irregularity (2). 97.—All those who command and give counsel are also irregular, as stated in *Si quis viduam*, dist. 50, *cap. Significasti*, and *cap. Sicut, de homic.* However, those who command and give counsel do not become irregular if the homicide occurred for another reason, according to Sanch. and Vivæ (3). But when there is doubt as to whether the command or counsel was the effective cause of the homicide, many doctors, such as Sanch., Salas, Nav., Salmant., etc., do not excuse them, because the command or counsel is presumed to be the cause, until the contrary is proven, and also because of *cap. Ad audientiam*, which states that in cases of doubt regarding homicide, the safer course should be followed, so that if the murderer is later identified, indecency and scandal may be avoided; and therefore, it should be said of the one who commanded or gave counsel. However, Dian., Spor., and Tamb. excuse them, because the laws speak of those who are certainly the cause of the homicide by the command or counsel, and not of those about whom there is doubt as to whether they were the cause; therefore, the second opinion seems not to be improbable (4). 98.—But if the counsel was revoked before it was put into effect, even though Nav., Bon., with Azor., seem to hold that one is still liable, because even though it was revoked, it still had an effect, nevertheless, Suarez (who

says it is the common opinion), Silv., Filib., P. Navar., Avil., and Salas, excuse him, because it is sufficient for the one who gave the counsel to be excused if, just as his counsel morally contributed to the homicide, so too, with its revocation, the moral influence is removed; and then the homicide is attributed more to the malice of the executor than to the counselor; provided, however, that the revocation of the homicide was notified before the crime was committed; and also, provided that the counselor did not suggest motives or the manner of execution; because then, it is more likely that one is liable; although, even with this last limitation, I do not consider the opposite opinion of Suarez to be improbable, according to what was said in tract. 10, n. 48 (5). (1) Lib. 7, n. 368. — (2) N. 369. — (3) N. 370. — (4) N. 371. — (5) N. 378.

[*Latin ed. p. 614*]

602 TRACTATE XIX. ON CANONS AND IRREGULARITIES. 99. — All those who cooperate in the commission of homicide are also guilty; therefore, the following are irregular: 1. He who incites another to commit homicide, when that person is already prepared to do so, because he is truly the direct cause of the homicide being committed at that time (1). 2. All who incite someone to commit homicide, even if only one person commits the act. 3. All who participate in an unjust war, if someone dies there, even if it is known with certainty that they did not wound or shoot anyone. 4. He who provides weapons or money for the commission of homicide, or for the waging of an unjust war. 5. False accusers, false witnesses, and unjust judges. 6. He who, by words or by his assistance, encourages the commission of homicide (2). 100. — It is asked: 1. Whether he who approves of a homicide committed for his benefit is irregular. The opinion is given in the negative, according to the common and more probable opinion of Suarez, Bonaventure, Escobar, Avila, and Salm, among others, against Navar and others, because no such irregularity is found in any law; it is true that approval is equivalent to a command in terms of guilt, but it is not expressly stated in the law, as is the case with excommunication for those who approve of the assault of clerics (3). 101. — It is asked: 2. Whether he who, being able to prevent a homicide, culpably fails to do so, is irregular. It is certain that if the obligation is one of charity, even if he neglects it out of hatred, he is not irregular; so say Suarez, Bonaventure, and others. There is doubt, however, if the obligation arises from justice, namely, from a contract or duty, for example, a doctor who receives payment for it; a lawyer who is obligated to defend the accused; a guard of the roads, etc. Many doctors, such as Roncaglia, Hurtado, Vasquez, Turr, Diana, and others, deny that this makes one irregular, because it does not directly contribute to the homicide. Others, however, such as Navar, Suarez, Castrop, Bonaventure, Escobar, and others, and Salm with many others, affirm that it does; because those who are obligated by justice to defend

and who are able to do so, appear to be true homicides, if not physically, then at least morally. Nevertheless, the first opinion also seems probable, based on the general principle: because, according to the sacred canons, only murderers, those who command, those who counsel, and those who positively cooperate are considered irregular. Furthermore, Tournel and Escobar excuse the father if his negligence caused the death of a child in a cradle, citing from chapter "Quaesitum, de pænit et rem.," where it is stated that only fathers who knowingly neglect to prevent the suffocation of children in cradles are irregular (4). 102. — Regarding accidental homicide, he is irregular who, by some action, foresees the danger of another's death and culpably neglects to consider that danger; this is the common opinion of the doctors, and it is clear from Clement's work, "De Homicidio." It is said "culpably," because since this irregularity arises from a fault, a mortal sin is required, as commonly stated by Suarez, Bonaventure, Tournel, and others (5). 103. — He who undertakes a lawful endeavor, using sufficient diligence to prevent the occurrence of homicide, would not be irregular, even if death should result; this is the common opinion of the doctors, with St. Thomas (6), and it is clear from chapter "Joannes, cap. Dilectus," and the last chapter, "De Homicidio." Otherwise, if sufficient diligence is neglected; see chapters "Presbyter" and "Ad audientiam," "De Homicidio." Sufficient diligence is that which is usually used by any prudent person, according to the nature of the circumstances. And it should be noted that the negligence must be mortally culpable, as the common doctors state, and it is proven from chapter "Quaesitum, de pænit et rem.," and from the final chapter, "De Homicidio." See the statements (1) Book 7, number 372. — (2) Number 374. — (3) Number 375. — (4) Number 576. — (5) Number 377. — (6) 2nd part, question 64, article 8.

[*Latin ed. p. 615*]

OF IRREGULARITY ARISING FROM A DELICT. 603 n. preceding 81 (1). Therefore, it follows that the following are not irregular: 1. A master who moderately chastises a student, and a father who chastises a son, if death occurs by chance; otherwise, if the chastisement is excessive, see chapter on Presbyters, and the chapter at the end on homicide. 2. He who, while riding a fierce horse, accidentally kills a child, see chapter on "Dilectus," section on homicide. 3. He who keeps a fierce animal under careful guard, if it escapes by chance and kills someone; otherwise, if he kept it in the street, or if it escaped through his negligence, according to Salmant and others. 4. He who, after warning those passing by, throws stones or tiles from a roof, according to Salmant, etc. 5. He who, in good faith, offers food or drink to a sick person, or who transfers or turns him over, etc., and the sick person dies; this is generally the opinion. 6. If a priest orders the incision of a member, which has already been prescribed by a doctor, provided he does not perform the incision himself, according to Cabass.

Indeed, the Council excuses a cleric who assists a surgeon in the incision of a member. And Navar and Covarrubias (and Salmant believe it probable) say that he is not irregular, even if he has it in mind that the sick person will quickly die; because although a mortal sin may be present, there is no external act of grave injustice. I add, provided that due diligence is used to avoid death (2). 7. A doctor, if a sick person dies unexpectedly from a medicine he administered, see chapter on "Ad aures," on age and the quality of orders. And this applies even if he is a cleric or a monk; provided that 1. he is skilled, or he does it in good faith, offering something to the sick person as a remedy or relief. 2. If he is a cleric, provided he heals without incision or cauterization, see chapter on "Sententiam," on clerics or monks, and if, despite the incision or cauterization, the sick person dies of illness or for another reason, Castrop and Salmanticus, along with others, excuse him from irregularity. Indeed, Castrop, Tournon, and Salmanticus, along with many others, commonly say that if no other skilled person is present, then a cleric or monk can, without sin and free from irregularity, perform an incision and apply fire; and even if the cleric is beneficed, if he uses an incision or cauterization without necessity, he is not considered irregular, according to the more correct opinion of Tournon, with Pontius, Gibault, Bonaventure, and Moller (against Navar and Panormius), because in chapter "Sententiam," mention is made only of clerics in sacred orders (3). 104. If someone undertakes an illicit, but not life-threatening, activity, using sufficient diligence, he is not irregular, even if he sins in another way, for example, if he induces another to steal without danger: and that other person is killed by mere chance, because then there is no cause for homicide, since he did not intend it directly, nor did he foresee it indirectly, this is the common opinion of the doctors against Paludanus and Gabrinus, who cite St. Thomas, 2.2, question 64, article 8, but incorrectly; for there, the Saint is speaking of one who does something dangerous that could lead to homicide, as is evident from the answers to 1 and 4. And the canon on clerics, etc., in d. 50, refers to homicide that is willed, directly or indirectly, as is deduced from Clement on homicide (4). 105. A greater doubt remains, whether one is irregular who undertakes an illicit activity, but one that is dangerous to life, if death occurs? There are two probable opinions. The first affirms, and this is supported by Suar, Navar, Moller, Conc. Av., etc., based on chapter "Tua nos" on homicide, where a monk skilled in medicine is declared irregular, who incised an abscess on a woman who died from her own negligence. But the second opinion is taught by Castrop, Tournon, Laym, Sporer, Tamburelli (1) Lib. 7, n. 385. — (2) N. 582, v. 4. Qui infirmo. and more fully 384, and lib. 3, n. 398. — (3) Lib. 7, n. 385. — (4) N. 386.

[*Latin ed. p. 616*]

TRACT. XIX. ON CENSURES AND IRREGULARITIES. Elbel, Bonac., Salm., and others, more plausibly state that if an action is so dangerous

that it frequently results in death (as in the case of igniting a bomb), then irregularity is incurred; for, whatever diligence is employed to avoid death, it cannot be said that an action that is inherently dangerous is not so. The same applies to one who engages in battle or incites another to recklessly expose themselves to the danger of death. Conversely, if an action rarely results in death, and due diligence is exercised, then homicide is not voluntary, neither in itself nor in its cause. Regarding the text "Tua nos," it is responded that a monk was declared irregular because he used a prohibited instrument, namely, a fucking knife, in violation of the rule. This does not contradict the chapter "Continebatur, de homic.," where a deacon was declared irregular who, while carrying a hidden sickle and playing with another, caused the latter to embrace him, whereupon he was struck by the sickle and died; for this deacon was considered irregular in the external forum because it was judged that he had failed in due diligence. Therefore, Suarez and Bonac. state that if this danger had not been foreseen, the individual would not have been bound in conscience to consider himself irregular (1). 106. — One is not irregular who kills in self-defense, when the defense is moderate, as stated in chapter "Significasti," § fin. de homic.; Clement. If one is enraged, as stated in the same title: "And we believe the same (namely, that one does not incur irregularity) regarding him who, unable to otherwise avoid death, kills or mutilates the aggressor." And although it may seem to contradict the Council of Trent, session 14, canon 7, which requires dispensation for homicide committed for a just cause, even for self-defense; it is understood, as Ronc. and Salm., and with the decree of the Sacred Congregation, to apply to one who exceeds the bounds of what is necessary, as expressed in the cited Clement. Furthermore, Suarez, Ronc., Less., Bonac., Filliuc., etc., excuse even those who kill an unjust aggressor of an innocent person; since irregularity arises from homicide due to mortal sin, as deduced from chapter "Ex Litteris, de homic." It is plausibly stated by Ronc., Suarez, Salmant., etc., that one is irregular who provokes another with insults and blows, foreseeing the danger of an attack, and if, after that, he kills the aggressor in self-defense; for then he has already committed a proximately dangerous action. Similarly, if an adulterer, foreseeing an attack, enters the concubine's house, and (after being attacked), kills the man in self-defense; or if a husband kills his wife, and the adulterer foresaw this damage (2). 107. — It is questioned: 1. Whether one is irregular who kills in order to defend liberty, honor, chastity, or temporal goods? Two opinions exist. The first is affirmative, and is held by Layman, Tourn., Spor., Nav., Sylv., Armil., Fagnan., etc., and they prove it from chapter "Suscepimus," in which a certain monk was declared irregular who killed two thieves; and also due to a lack of gentleness. However, the second opinion is more common and more plausible, and is defended by Suarez (who calls it the common opinion), Less., Castr., Fill., Bon., Holzm., Elbel, Ronc., Barb., and Salm., among many others. And it is proven from chapter

"Quia te, d. 50," where a certain bishop, captured by Saracens, killed many in order to defend his liberty, and was subsequently declared free from irregularity by Urban II; and Boverius, in the year 1571, n. 6, and Raynaud assert that a Capuchin, named Father Anselm of Petramellara, captured by the Turks, killed seven Turks in order to free himself, and was declared free from irregularity by St. Pius V. 1) Lib. 7. n. 287. — (s) N. 388.

[*Latin ed. p. 617*]

OF IRREGULARITY ARISING FROM A DELICT. 605. Also, from chapter *Interfecisti*, where irregularity arising from a delict is excused for one who kills in defense of himself and his own; and this also signifies that, otherwise, no one could defend himself alone, unless he also defended his property; and it would be pointless for the pontiff to have added "his own" if irregularity were avoided only for the defense of life. And it is clearer from chapter *Dilecta*, concerning sentences of excommunication, where the Pope declared it permissible for a certain dean to defend his property from the violence of a certain temporal lord, using both temporal forces (namely, arms) and the spiritual sword; giving the reason that the laws permit the use of force to repel and defend; from which it is observed that the Pope considered that, just as one can defend oneself, one can also defend property. Therefore, just as one who kills in self-defense does not incur irregularity, so neither does one who protects property; provided that the action does not exceed what is necessary, and the property is of considerable value (see treatise 8, no. 15). Furthermore, the reason holds that such irregularity does not arise from a delict, because, as has been proven in treatise 8, no. cited, it is not committed without sin; nor does it arise from a defect, because this only applies to public officials of justice, soldiers in offensive combat, and clerics who practice medicine with incisions and cauterizations, as stated in *Ad cap. Suscepimus*. It is answered that a monk exceeded the bounds in his defense; for after recovering goods from the hands of thieves, he wanted to lead them, bound, to the abbot, when he could already have let them go, having already recovered the goods (1). 108. — It is asked: 2. Whether a casual homicide committed in a brawl should be considered. This is held by Diana and Salmantius, with Machad, Henriq, Rodrig., etc., because voluntary homicide is properly that which is committed with intent and through legal proceedings, as the Council of Trent says, "by industry and deceit" (session 14, chap. 7). But it is more probable that Suarez, Navar, Holzm, Spor, Tambur, and Diana, with Hurtad, deny this; for the Council of Trent, after the words cited, adds: "Whoever has committed homicide with his own will... may never be promoted to the sacred orders." He who kills in a brawl already kills with his own will, and with intent (although moved by sudden anger), and commits a homicide that he intends to commit. The words "by industry and by deceit," explains the Glossary in chapter 1 on homicide (from which the

Council of Trent transcribed the cited words in chapter 7) in this way: "by industry," that is, not by chance. And the same council declares itself, after the words cited, which are taken from chapter 1 on homicide, by explaining their meaning, adding, "with his own will, and with intent," to distinguish it from a casual homicide, of which the following discussion speaks in the second part. 109. — Irregularity also arises from mutilation, as stated in chapter *Significasti*, on homicide, and by Clement, *Furiosus*, in the same title. But here it is doubtful what is meant by the term "mutilation of a member"? Commonly and more probably, Bon, Castr, Conc, Habert, Tourn, Cabass, Navar, Avila, and Salm, with many others, say that it refers to that part of the body which has a distinct function from others, such as the eye for seeing, the hand for working, the foot for walking, the tongue for speaking, etc.; therefore, other things that serve for adornment are not considered members, such as teeth, nails, hair, ears (for even with the cartilages removed, one can hear), nose, or any finger; Bonac, Castrop, Tourn, and Salm, with others. And if in canon *Qui partem*, dist. 55, it is declared irregular for someone to cut off a finger, it was done to punish cruelty against oneself; Tournely, Bonac, Castrop, and Salm, with many others; and this is clear from the text itself (2). (1) Lib. 7, no. 89. ~ (a) Nos. 665 and 415.

[*Latin ed. p. 618*]

TRACTATE XIX. CONCERNING IMPEDIMENTS AND IRREGULARITIES. 110. — It is inquired: 1. Whether one who amputates another's testicles, or another part of the body, is irregular. Bonaventure and the Bollandists deny it, because these are not members, but parts of a member. However, Roncaglia, Castro, and Salm, with Diana, more plausibly affirm it, because the testicles already have their own proper function, namely, to produce semen suitable for generation (provided that this amputation is unjust); otherwise, if only one is amputated, because both contribute to the same function. One would be irregular who amputated one breast from a woman, because the function of one is independent of the other. Suarez and others, with Viva, teach the same concerning one who amputates half of another's hand. However, Tournely denies this, because in chapter 2 concerning sick clerics, one who has lost two fingers and half of his hand is not said to be mutilated, but weakened. Furthermore, it is commonly said that one who restores a member to another, even if he renders his own member unable to perform its function, does not become irregular; Navar, Gibault, Suarez, and Avellane, Salm, with many others, and Croix, with others, teach this. Even Castro, Navar, and Covarrubias teach that, even if the member remains dead, one is not irregular. However, Suarez, Cabassus, and Salm strongly object to this, because such a member, even if it is not materially mutilated, is truly and formally amputated, since it is no longer animated. Salm, however, probably says that one who amputates such a dry member would not be irregular. Nor is one irregular who deprives an-

other of sight by gouging out his eye, because it would not be a mutilation, according to Busembach, Diana, and Megala. In these irregularities arising from mutilation, when it is secret, the bishop can grant a dispensation, unless it is a case of voluntary homicide, according to Suarez, Bonaventure, etc. 111. — Concerning dispensations regarding these irregularities, see the following treatise on Privileges, numbers 51 and 106 (1). POINT V. OF IRREGULARITY ARISING FROM DEFECT. 112. I. From a defect of the soul. — 113. Concerning lunatics and the possessed. — 114. Concerning the uneducated. — 115. Concerning neophytes. — 116. II. From a defect of the body, and I. Concerning the blind. — 117. II. Concerning the deaf. — 118. III. Concerning the mute. — 119. IV. Concerning the lame. — 120. V. Concerning those who lack a hand. — 121. VI. Concerning those suffering from fever. — 122. Concerning the deformed. — 123. Concerning the lepers. — 124. Concerning the monstrous. — 125. Concerning eunuchs. — 126 to 128. III. From defects of birth. — 129. Concerning abandoned children. — 130. IV. From a defect of age. — 131. V. From a defect of marriage, namely, bigamy. Concerning true bigamy. — 132. Concerning interpretative bigamy. — 133. Concerning those who are adulterers. — 134. Concerning those who contract two marriages. — 137. If a man accuses his wife and fulfills the debt [of marriage], etc. — 138. Concerning apparent bigamy. — 139. How the irregularity arising from bigamy is removed. — 140. VI. From infamy; VII. From a defect of liberty. Concerning slaves. — 141. Concerning those who are married. — 142. Whether a spouse can enter religion, leaving the other in the world. — 143. Concerning those addicted to the court, soldiers, etc. — 144. VIII. From a defect of gentleness; concerning war. — 145 and 146. Concerning judgment. — 147. Concerning dispensations. — 148. Concerning the faculties of the Sacred Penitentiary. 112. — The first [irregularity] arises from a defect of the soul, from which all are irregular who are insane, frenetic, epileptic, or lunatics and the possessed. Concerning the insane (and the same applies to the others), a distinction must be made: either this defect arises after ordination, and then, if the defect ceases after a long period of time, many years, the ordinary can administer the sacraments in the received orders, according to Suarez, Navar, Silvestri, St. Bonaventure, Bonaventure, and many others. If he is not yet ordained, he cannot be ordained again, if the origin depends on a permanent cause, namely, from a lesion of the organs, because in such a case... (1) Book 7, numbers 580 and 58r.

[*Latin ed. p. 619*]

OF IRREGULARITY ARISING FROM DEFECT. 607, can. Maritus, d. 33. Conversely, if the defect arises from some accidental cause, such as a fever, wound, or some transient passion; Suar., Bonac., Ronc., etc. (1). 113 — The same should be said of lunatics and the possessed; if the disease precedes ordination, they are perpetually irregular, can. Communiter, d. 33. Cabass

notes that if such a disease occurs in adolescence, and afterwards is completely cured in adulthood, he may be ordained, because Hippocrates asserts that epilepsy is often completely cured in adulthood; but if it occurs in adulthood, especially after the age of 25, it is considered hopeless that it can be cured. From the cited canon, Communiter, it is held that if one has been free from the disease or from demonic vexation for a year, he may, by the judgment of the bishop, be admitted to the administration of the orders. Indeed, the common doctors, Suar., Nav., Laym., S. Antonin., etc., state that if such a disease occurs rarely (namely, once a month), unless the sick person falls to the ground and does not spit, with a priest present who is fasting, he may privately celebrate (2). 114. — Those who are uneducated and are not endowed with sufficient instruction for the orders. Moreover, at least for the first tonsure, one must know how to read and write; Trident., sess. 23, cap. 4. For the minor orders, one must know the Latin language, loc. cit., cap. 11. For the subdiaconate and diaconate, in addition to the knowledge of the humanities, the knowledge of those things which are necessary for the exercise of these orders is required; ib., cap. 13. For the priesthood, the knowledge of those things which are necessary for teaching the people and for the administration of the sacraments is required, c. 14 and 25. But with regard to those who are dedicated to a contemplative life, it is sufficient for them to be versed in grammar; otherwise, the irregularity is of divine law, so that even the Pope cannot dispense in this matter (3). See in Ap. 3, n. 35 and 36, regarding the examination of those to be ordained. 115. — Neophytes, that is, those who are recently baptized in adult age. But if, after some time, the ordinary judges them to be fit for the sacred orders, they may be ordained: Suar., in 3. D. Thom., p. disp. 43, sect. 3, concl. 2, n. 6 and 7. Sanch., in dec. 1, 2, c. 28, n. 11. Bon., ap. Thes. Decis., S. C., tr. 1, p. 97. But Toletus holds that after 10 years, they are no longer irregular (4). 116. — The second is due to a defect of the body. This is incurred in two ways, either because someone is rendered incapable of exercising the order to which he is admitted; or because he presents a noticeable deformity or horror to others; thus, the doctors commonly state, along with St. Thomas (5). Hence, from the first head, a blind person is irregular, c. ult., d. 55. But the following should be noted: 1. If someone is already a priest, and it is certain that he cannot err, a dispensation may be granted by the Pope to celebrate, as on August 23, 1725, the Sacred Congregation dispensed with a certain parish priest to celebrate, with the assistance of a priest (6). 2. If someone lacks sight in the left eye, he is irregular, as the common doctors teach. However, some object if the right eye is fit for reading the canon; indeed, they say that it may be possible for him to adapt by placing the Missal near the middle of the altar; Laym., Dian., Croix, and many others; and P. Suar. calls this a practice that is probably permissible. 3. A bleareyed person is irregular for receiving the orders, but a dispensation may be granted to him to exercise them, so that he may celebrate Mass on feast days

for the most blessed Virgin and on weekdays for the dead (7). Lambertinus, in the cited place, says (1) Lib. 7, n. 398. — (2) N. 399. — (3) Lib. 6, n. 791, v. Quær. II. and III. and l. 7, n. 401. — (4) Lib. 7, n. 402. — (5) Suppl., q. 39, a. 6. — (6) Lib. 7, n. 404. — (7) Lambert., notif. 4, n. 5, and cf. l. n. 404.

[*Latin ed. p. 620*]

608 TRACTATE XIX. ON DEFECTS AND IRREGULARITIES. For a totally blind person, no dispensation is granted, not even for the first tonsure, so that he may not be deemed fit for a benefice. 4. A person who is weak of sight, if he can use spectacles, is not irregular; nor is one who sees obliquely (commonly called a "squint"), according to the common opinion of the Doctors. 117. — II. A deaf person, who does not hear at all; this is the common opinion of the Doctors, according to canon 7, which is called "Apostolorum," because of the indecency involved, since he cannot hear the voice of the minister. However, Henry, Prefect, Gobat, denies this indecency, arguing that he can perceive what the minister has said through other signs; but the contrary opinion is more common. Nevertheless, Bonaventure, Tamburelli, the Council of Trent, Navarret, and Salm, among others, concede that if deafness supervenes upon a person after he has been ordained, the defect is more easily tolerated, just as in the case of a blind person. A deaf person, however, is excused from irregularity (1). 118. — III. A mute person, whether completely mute or one who cannot utter a word without omitting something, Tournhem, Holzmüller, and Salm add that this also applies if he can only speak with great difficulty. Holzmüller also says the same of one who has a very harsh speech impediment. Those who stammer or are missing teeth are not irregular, provided they do not cause laughter or contempt in others: Navarret, Tamburelli, Concina, Sayr, Filliucca, Prefect, etc. (2). 119. — IV. A lame person, or one who lacks the tibia, or who cannot approach the altar without a crutch, canon Nullus episcopus, 54, de consecrat., d. 1. This is explained by the Glossary: "If he cannot be supported at the altar without a crutch," and so explain the other authors. However, one who does not need a crutch is not irregular, canon Si quis 10, d. 55, nor one who has twisted tibias, because such a defect can be concealed by clothing, Tournhem, Croix, Salm, etc. Laym, however, makes an exception if the deformity is very great. One who uses a wooden crutch, and who is already a priest, can, at the judgment of the ordinary, celebrate Mass properly, provided the defect can be remedied: Tamburelli, Sileo, Roselli, Major, and Gibaldi (3). 120. — V. One who lacks a hand, or all the fingers, or only the thumb, invalidates the consecration, according to the last chapter of the De Corpore. Busembach, Renard, Tamburelli, Filliucca, Bonaventure, Suarès, etc., say the same. If he lacked the index finger or part of the thumb, but not just the fingernails, according to St. Thomas, in the same title; or if those fingers are so weak that they cannot elevate the host, or break it, cited in the same chapter of St. Thomas. However, if

he lacked the index finger and had already been ordained, he can use the other fingers, or, in necessity, he can even administer the Eucharist with them (4). If, however, he lacked the three fingers of the hand, he would also be irregular (unlike if he lacked only two): so Anaclito, Holzmüller, Cajetan, Navarret, Tournhem, and Pontanus. Tournhem notes, however, that one who lacks the index finger may be able to obtain a dispensation (5). 121. — VI. One who suffers from a continuous fever (but not a quartan fever or a mild fever), or a severe headache, to the extent that he cannot celebrate without the risk of serious error or deficiency: Bonacini, Sayr, Soto, Avila. Also, a paralytic, whose hands tremble so much that there is a risk of spilling the chalice: Busembach, Council of Trent, etc. One who suffers from such a cough that there is a risk of choking, and especially of spitting out blood: Bonacini, Ugolini, Majol, etc. An abstemious person who is in danger of vomiting: Tournhem and Concina: and in this case, even the Pope cannot grant a dispensation (6). 122. — From the second chapter, it is stated that an irregularity arises from a defect of the body that causes deformity or horror, chapter Presbyterum, de clericis aegrotis, et seq. The following are irregular: I. those who lack a member, e.g., (z) Lib. 7, n. 405. — (z) N. 406. (5, N. 407. — (4) N. 408. (5) Ibid. — (6) N. 409.

[*Latin ed. p. 621*]

OF IRREGULARITY ARISING FROM DEFECTS. 609, n. 5, penultimate paragraph on bodily defects: or who have it very distorted, or very prominent, or very raised; Tamb. Bonac. Viva, etc. He whose eyes are clouded, chapter 12, paragraph 55. However, Silv. Tourn. Pont. Ronc. with Tamb. etc. say that such an irregularity is removed if the crystalline lens of the eye can be repaired. Likewise, he who is deaf, unless such a deformity is covered by hair or otherwise; Busemb. Dian. Bon. Salm. and Tourn. with others (1). 123. — II. Lepers, chapter "You are our brothers," concerning sick clerics, because of the scandal and abomination of the people; therefore, they can celebrate privately; Castrop. Salm. Bonac., with others; likewise, he who has lips corroded, or cut off like a hare's lip, Tamb. Tourn. and Viv. Likewise, one suffering from the French disease externally apparent; Tourn. and Holzm., or one with a very spotted face; Laym. (2). 124. — III. Monstrous individuals, namely, those with a very large hump, Busemb. Anaclet. Bonacin. etc. Dwarfs, or pygmies, of such short stature that they cause laughter, especially if they have a head that is too large; Tamb. Ren. Tourn. etc., or if they cannot extend their arms as far as is necessary for the service of the altar. Ethiopians who cause laughter among us, Tournely, etc. Hermaphrodites, although Tolet. Escob. with Tourn. say against Conin. that if this defect is hidden, and the male sex predominates, it does not cause irregularity. It should be upon noted, however, that if these defects occur in those who have received holy orders, they can perform those acts that they are able to; for example, if a priest is blind, he can hear con-

fessions, chapter 7, concerning sick clerics (3). 125. — An eunuch who has been castrated by disease, or in infancy, or by the injury of another, or by his lord, is not irregular. But he is irregular if he himself mutilated himself, or even by others, with his consent, even out of zeal for chastity, chapter "If anyone," paragraph 4, of paragraph 55, and other paragraphs concerning bodily defects (4). It is considered probable by Palaus, Tamb. and Pell. against Suar. Molin. and Sayr., that if someone mutilated his testicles in order to preserve his voice, he does not become irregular, saying that the texts cited speak of castration, or section, which can be understood if the testicles are completely removed (5). 126. — A third irregularity arises from defects of birth. And from this, all illegitimate children are irregular, chapter 1 and the last, concerning illegitimate priests, even if they are hidden; commonly held by doctors (6). These can be legitimized by a subsequent marriage, provided they are not spurious, namely, born at a time when a valid marriage could not have been contracted, for example, because at that time one of them was bound to another in marriage, chapter "So great are the sons," which is sufficient to legitimize the offspring, and to render them free from such a defect of birth, if a marriage could have been contracted at the time of birth; thus, probably Sanch. Pont. Anac. Bon. and Salm. with many others against Suar. and Tourn. from chapter "So great are the sons," where it says: "If a man, while his wife is living, knows another woman, and conceives a child from her," for "conceives" refers more truly to birth than to conception (7). And most recently, Benedict XIV. illustrated this opinion with a very extensive dissertation in the form of a responsive letter, beginning "Having been made aware of" (8) to the Archbishop of St. Dominic, on the island of Hispaniola, and thus concerning this case, § 3. (1) Lib. 7, n. 410. — (2) N. 411. — (3) N. 412. — (4) N. 412. — (5) N. 418. — (6) N. 420. — (7) N. 422. — (8) Bullar. suo tom. 1, in Ordine 225, in edit. Mechl. tom. 3, p. 5. 39.

[*Latin ed. p. 622*]

610 TRACTATE XIX. ON CANONS AND IRREGULARITIES. He reveals his meaning: "In those controversies where texts are contrary to texts, and doctors are opposed to doctors, if it were up to us to pass judgment, we would do so no differently than according to the opinion received in the tribunals and court of that region, in which the judgment must be pronounced." In § 4, he proceeds to another doubt, which he resolves as follows: "But since it is certain that the marriage between those parents was duly contracted, and the time at which the son was conceived and born is uncertain, we would consider this son to be legitimate, since the judge, in a doubt, must be inclined towards the good and the benefit of the offspring." With these premises established, I argue as follows for the first opinion. Therefore, if a judge must judge in favor of the offspring when in doubt, and no tribunal has rendered a decision in such a case, and we are in doubt

due to the discrepancy of texts and doctors, then the offspring should be judged to be legitimate rather than illegitimate, provided that, even in this case, it is certain that he was born within the bonds of marriage, and it is uncertain whether the time of conception or the time of birth should be considered.

127. — Note the following: 1. As Salm. states, if a natural son were born before the parents' adulterous marriage, he can duly minister, after their marriage, without a dispensation. 2. That such legitimization occurs only through a valid marriage, as cited in chapter Tanta, 3. That sons born from a marriage that is invalid due to a hidden, but valid, impediment, at least on one side of the spouses, are considered legitimate; so the doctors commonly state from chapter Cum inter 2. Qui filii sint legitimi; and chapter Ex tenore, ibid. title. Conversely, if both parents were in bad faith, chapter Cum inhibitio, § Si quis, de cland. despons. 4. That sons born from a marriage contracted in a prohibited degree, without the required proclamations, and without the dispensation of the bishop, are considered illegitimate, even though they were contracted in good faith, or out of ignorance, chapter Cum inhibitio, ibid. title. § Si quis (1).

128. — Sons are legitimized I. by religious profession, as stated in n. 85. II. by the dispensation of the Pope, who alone can dispense with illegitimacy and grant legitimization with regard to all effects, as commonly stated by the doctors with Sanch., Castr., Salm., etc. (2). See treatise 20. on Privileges, n. 51 and 106, for what bishops and prelates can do in this regard.

129. — It is asked whether sons born "in positu" (i.e., born of unknown parents) are irregular? Many affirm this, as stated by Tourn., Fill., Bonac., etc., because strong conjectures exist that these are illegitimate, since the parents (although perhaps suffering from poverty) are never seen to be of such cruel intention as to abandon their own offspring: indeed, it has hitherto been unheard of that a pregnant woman would not bring her child to be baptized in the church, and that, after baptism, if the child were missing from the mother, justice would not inquire about this. However, the second opinion is more probable, as stated by Castr., Pont., and Salm., and Suar. calls it probable; for in order for someone to be irregular, it must be established that he is illegitimate, but those born "in positu" are doubtfully such, since sometimes impoverished parents abandon their children. And the cited authors assert that Gregory XIV, in the year 1591, declared in favor of any confraternity established for abandoned children that such abandoned children should not be considered illegitimate, unless they were proven to be so, as stated by Gibal. apud Tournely (3). (1) Lib. 7. n. 425, 424, and 425. (2) N. 426 and 427. (3) N. 435.

[*Latin ed. p. 623*]

OF IRREGULARITY ARISING FROM DEFECT. 611 130. — The fourth [ground for irregularity] arises from a defect of age; but we shall speak

of this in App. 3, concerning the examination of candidates, nos. 43 and 44. 131. — The fifth arises from a defect in the sacrament, or in the signification of marriage, which signifies the conjunction of Christ, the one spouse, with the Church, the one bride, and is contracted through bigamy, to the extent that he who divides his flesh with multiple wives does not represent such a union. And such an irregularity is evident from the entire title concerning bigamy. Bigamy is defined as the multiplication of marriages. And it is threefold, true, interpretative, and figurative. I. True bigamy occurs when one person successively takes multiple wives, and consummates the marriage with all of them, in the manner described in treatise 18, no. 68, chapter *Præcipimus*, and chapter *Debitum*, concerning bigamy. (1). 132. — II. Interpretative bigamy occurs when someone contracts and consummates marriage with a widow who is already known to have been previously with another man, even if that person contracted the marriage invalidly, as is stated in chapter *A nobis*, concerning bigamy, or with someone who is corrupt, in the final chapter, no. 51, or when one recognizes one's own wife after she has committed adultery, in chapters *Si cujus* and *Si laicis*, no. 39; or if someone has contracted and consummated two marriages, one valid and the other invalid. No text is found concerning this last type, but there is a common judgment of the doctors, from chapter *Nuper* with St. Thomas (2). Three questions arise concerning this bigamy. 133. — It is asked: 1. Whether someone who contracts marriage in good faith with a corrupt woman is irregular. The doctors commonly affirm this, with St. Thomas (3) (contrary to Sa, Ledrsma, etc.), because, since this is an irregularity arising from a defect in the signification of Christ with his one bride, good faith does not prevent the man from dividing his flesh with a corrupt woman, even if he believes her to be a virgin (4). 134. — It is asked: 2. Whether someone who contracts marriage invalidly with a corrupt woman, due to some impediment, is irregular. The first opinion is affirmative, and this is held by Suarez (who calls it the common opinion), Tourn., Covar., Cornejo. Also, Fagnanus (5), with Host. Joanne Andrea, Cardinal of Brutus, and all others (as he himself says), concerning a cleric who is not in Holy Orders, and with Silv. and Nav. concerning a layman. And it is proven from chapter *A nobis*, concerning bigamy, where a subdeacon was declared irregular who had contracted marriage with a widow, among whom (as Innocent III said) « although no marital bond was contracted (due to the impediment of those), nevertheless, with regard to her, he was treated as if he were her husband »; not because of a defect in the sacrament, but »because of the effect of the intention with the action performed.» It is already noted that this subdeacon was not declared irregular because he contracted a spiritual marriage through Holy Orders after the contract, but because he joined himself with a widow, for which reason he was treated as if he were her husband, due to the effect of the intention, etc. The second opinion denies such an irregularity, and this is held by Sanch., Nav., and Salm.,

with a certain decision of the Sacred Congregation, as cited by Farinatius, saying that this subdeacon was treated as irregular because he contracted two marriages, one spiritual and the other carnal, even if the latter was invalid. This proof for the first opinion also applies to the response (6). Contrary to the irregularity understood by the opponents, is contracted by a subdeacon, even if he were to contract marriage with a virgin, as we shall say in no. 140. In response to the decision of the Sacred Congregation, we say that the decisions cited by Farinatius were declared in-

(1) Lib. 7. n. 436. — (2) Suppl. q. 66. a. 2. — (3) Loc. cit. a. 3. ad 3. — (4) Lib. 7. n. 459. — (5) In a. part. 1. Decret. c. Nuper à nobis, de bigam. n. 13 et 44. — (6) Lib. 7. n. 440.

[*Latin ed. p. 624*]

612 TRACTATE XIX. CONCERNING CENSURES AND IRREGULARITIES. Certain matters, as decreed by Gregory XIV in the year 1621 (1). And it should be noted here that on August 29, 1631, by order of Urban VIII, the Sacred Congregation declared that credence should not be given to decrees of the Sacred Congregation unless they were authentically established, namely, with the signature of the Cardinal Prefect (2).

135. It is questioned: 3. Whether one is irregular who knowingly takes a wife who is an adulteress, when the adultery is concealed. Henry and others, according to Elbel, in chapter "Si cujus," d. 34, deny this, stating: "If it is clearly proven that the wife has committed adultery." But we affirm, with the common opinion in Elbel, and so do Tournhem and Roncaglia, with Suarez, Ugolini, and Fillon, that this applies even if the wife was under duress. The reason is the same as in the first question posed; therefore, it makes little difference whether she was under duress, or whether the husband is not guilty of fault; as long as there was a true division of the flesh; thus Fagnani (3), with Ugolini, Hostiensis, etc., saying: "Here, we are not dealing with a defect in ordination, but with a defect in the sacrament, which even an ignorant person can incur." In response to the text, the words "if it is clearly proven, etc.," only prove that if the husband is not certain of his wife's adultery, he is not to be considered irregular (4), although the husband may be unaware of the adultery, he himself is irregular (5).

136. From this, it follows that 1. the same should be said, for the same reasons, as with St. Thomas (6), Suarez, Tournhem, the Council of St. Antonin, and many others, concerning one who contracts two invalid marriages (7), even in good faith, as is deduced from chapter "A nobis," which we have previously explained in n. 132. 2. Also, one is irregular who fictitiously contracts a second marriage in order to extort intercourse; thus Suarez, Tournhem, and Salm, with others, against Palearius, who relies on the words because of the effect of the intention; but we say that these words do not mean that the subdeacon truly intended to contract a marriage, but rather that he had the intention of putting it into effect, even if he could

not actually do so. Therefore, it is the same to desire a marriage that is impossible and to pretend to effect it, when one does not intend to actually effect it (8).

137. The Glossa in canon "Si cujus," d. 34, proposes the case: If a husband accused his wife of adultery, and while the dispute was pending, he was asked about his marital duty, would it be irregular for him to fulfill it? It is answered that, given that the husband is not certain of his wife's adultery, and that he is certainly obligated to fulfill his duty, then (says the Glossa), "he is rather said to know the wife, than to know her," and therefore, it would not be irregular for him to fulfill his duty. Following this reasoning, I believe that the same should be said of a husband who, in good faith, contracted marriage with a woman who is corrupt, as in n. 135 and 136, if he fulfills his duty and does not seek to avoid it, and of one who fulfills his duty to a wife who is secretly an adulteress.

138. 3. Bigamy is contracted through marriage (even if it is a null marriage, and even if it is with a virgin) contracted after the solemn emission of a vow, either of religion or of a sacred order. This bigamy incurs irregularity, whenever the marriage is consummated, c. 13; "Quotquot," and canon 23; "Monacho," 27, q. 1, where it is said: "If he is afterwards associated with a wife," he shall never attain to the ecclesiastical degree or office." Hurtado, Abbondanzio, and Archidiano say that this irregularity applies only to monks; but (1) Ap. Croix, l. r., n. 219. — (2) See Potestas, t. r., p. 1, n. 219. — (3) Fagnani, In s. part. 1, Decretal, cap. "Nuper a nobis" de bigam., n. 5. — (4) Lib. 7, n. 442. — (5) N. 443. — (6) Suppl. q. 66, a. 2. — (7) Lib. 7, n. 445. — (8) N. 447.

[*Latin ed. p. 625*]

OF IRREGULARITY ARISING FROM DEFECT. Many of the most learned doctors teach that an irregularity can also arise in sacred matters, as is stated in chapter 1 of *Qui clerici vel monachi*, which says that a bishop can grant a dispensation to a deacon who has taken a wife, to perform sacred duties, etc.; and in chapter 2 of the same title, it is prescribed that a bishop should not allow a subdeacon who is married to perform sacred duties. However, Sanchez believes that this irregularity arises more from a fault than from bigamy. Nevertheless, one would not be irregular if, not having received the sacraments, one contracted marriage with a religious woman against her will, because the laws speak of one who is married after having made a vow (1). 139 — This irregularity of bigamy is not removed by baptism, according to canon law. If a widow, as stated in *Si quis viduam*, d. 34, is joined to someone, this is in common agreement with St. Thomas (2). However, the Pope can grant a dispensation for a grave reason; Sanchez, *Concin. Salmant.*, and others; and Tournely states that Pope Leo III already granted such a dispensation (3). What bishops and religious can do in this regard is discussed in the following section,

numbers 51 and 106, of *De Privilegiis*. 140 — A sixth type of irregularity arises from infamy. However, this has already been discussed in numbers 81 and 82. A seventh type arises from a lack of freedom; hence, slaves are irregular, namely, those who are in bondage until they are granted freedom. However, if a slave, with the knowledge and consent of his lord, is ordained (even with the first tonsure), he acquires freedom at the same time, according to canon law. If the slave is a cleric, and according to canon law, *Nulli*, d. 54, he can still be granted freedom, with the condition that he serve him in matters that do not conflict with his clerical status, as is derived from chapter *Nullus*, concerning unordained slaves. But if a slave was ordained by his lord, he remains a slave, provided he is not engaged in sacred duties, and provided that a double amount is not paid to the lord by the bishop or those acting on his behalf; but if these individuals are unable to pay, even if he is a deacon, he remains a slave, and if he is a priest, he is obligated to serve in matters befitting his status and to celebrate for the lord, provided that the lord does not conceal this knowledge for a year (4). 141 — Secondly, those who are married are irregular if their wives do not consent and do not bind themselves with a vow of chastity, as stated in the last chapter of *De Tempore ordinis* in 6, and in *Extravagantes Antiquae* concerning the vow, and even if the marriage is valid, as stated in the same *Extravagantes*: it is probable that if he had been ordained in sacred matters, he would not be obligated to enter religion, since this is a burden too heavy; Sanchez, *Avers Salmant.*, St. Antoninus, etc. (5). 142 — It is questioned whether a husband can be initiated into sacred matters, or enter religion with the consent of his wife, if she does not embrace the religious state? Some authors deny this, as stated in chapter *Conjugatus*, concerning conversion of spouses, where it is said that a husband cannot be ordained unless he has been absolved by his wife, who professes continence; therefore, they say that it is sufficient if the wife vows chastity, since the text speaks of professing continence (not already of religion). However, this must be entirely denied, since it is clearly expressed in chapter *Cum sis*, in the same title, where it is said: "He must not ignore that it is contrary to the constitutions of the Holy Fathers that a man, with his wife, or a wife, with her husband, who is not taking on the habit of religion, should enter religion." Pope Nicholas also responded in canon *Scripsimus*, 27, in question 2, concerning the wife of King Lothair, saying: "This cannot be done unless his spouse also chooses the same life as Lothair." And to the contrary text, it is responded that the word "professing" should be understood as a solemn profession. Furthermore, all agree that... (1) *Lib. 7*, n. 448 and 449. (2) *Suppl. q. 66*, n. 4. (3) *Lib. 7*, n. 450 and following. (4) N. 458. (5) *Lib. 6*, n. 812.

[*Latin ed. p. 626*]

614 TRACT. XIX. ON CENSORSHIPS AND IRREGULARITIES. It fol-

lows that if a wife is young, she cannot remain in the world if her husband enters religion; conversely, if she is of advanced age, the same text, "If thou wilt," allows her to remain in the world, by making a simple vow of chastity. 143. — III. Curialists who are bound to serve the court, either by oath or by salary, such as judges, lawyers, etc., are subject to this restriction during the time that these offices last, chapters 1, 2, and 3 of book 15, provided they have not obtained permission from the Pope or by custom to exercise these duties, as are royal counselors in civil matters; Laym. Castrop. Suarez, Salmant. with others (1). IV. Soldiers are subject to this restriction during the time they are bound by oath. Likewise, treasurers, public depositaries, and others who administer public affairs. Also, the king's guards, and all others who perform any act of severity or infamy, or who minister in a matter of blood (2). 144. — An act of lenity is committed when, in a just offensive war, a mutilation or killing is permitted. But to incur this irregularity, it must be that the killing was done with one's own hand; Bus. Holzm. and Lambertinus, from chapter "Dilectus" and chapter "Significasti, de homic." Busemb. and Bonacina say that he who in a just war incites another to kill a particular person would be irregular; but Salm. probably contradicts this, because the text speaks of one who kills or mutilates, not of one who incites. But if the war is just, and not offensive but defensive, the one who kills does not become irregular, chapter 2 of book 1 of the ecclesiastical decrees and Clementine, on homicide. But in an unjust war, it is sufficient that one person is killed for all to become irregular; all the doctors, with St. Thomas, 2-2, question 64, article 8 (3). It should be noted that a cleric (if he is in holy orders or holds a benefice) is irregular if he is a soldier, even if he swears that he has not harmed anyone, as is read in Lambertinus, Notification 101, number 19. 145. — Judges and all who cooperate in a just judgment leading to death or mutilation, actively, effectively, and proximately, through an action naturally suited to that end, commit an act of lenity and become irregular; Clementine, on homicide, chapter "De cleric." and chapter "Sententiam, de cleric. vel mon." It is said "actively," that is, those who are on the side of the killers, not those on the side of the killed, as would be the case with a confessor who incites the accused to accept death, etc. (4). It is said "effectively," because he who brings wood to burn a corpse is not irregular, nor is he who assists; and although in the aforementioned chapter "Sententiam" it is forbidden for clerics to be present at such punishments, it is said here that this canon is either abrogated or does not obligate under a grave penalty; Bonac. Salm. and Tourn. call it a "comm." Indeed, Nav. and Avil. excuse the minorite from all guilt (5). It is said "proximately," because he who sharpens swords, or sells them, or who incites others to punish the guilty, or another who does not act as a necessary minister, but remotely, is not irregular; hence, Suarez, Regin. Laym. Av. Busemb., etc., very probably say that a confessor who would say to a judge, "This guilty person deserves death," is not irregular.

Finally, it is said "through an action naturally suited to death"; hence, a confessor is not irregular who would say to the executioner: "My office is fulfilled, I do not hinder you from doing your duty"; nor are ecclesiastical judges who hand over a degraded person to the secular court, nor is a cleric who is an accuser in a criminal case, provided he protests that he does not intend to inflict the penalty of blood; Bonac. Busemb. Tambur., etc. (6). 16. — On the contrary, the following are irregular: 1. The judge and his assessors, the scribe (1) Lib. 7. v. 456.—(2) Ibid.—(3) N. 459 et 460.—(4) N. 461. et 462.—(5) N. 463.—(6) N. 464 ad 468.

[*Latin ed. p. 627*]

OF IRREGULARITY ARISING FROM DEFECT. 615, writing the sentence (but not he who transcribes it), and all others who execute the sentence (1). Conversely, those who entrust the sentence to others, see chapter ult. Ne cler., etc., unless they order that the sentence of death be given in such a case, or that such a case of death be expedited; Castrop. Salm. with others. 2. Voluntary witnesses, who offer themselves freely, even if they protest, are generally permitted by the doctors; and the same is to be said of advocates and prosecutors of the accused, unless they are compelled to defend him; Salm. with the same. 3. An accuser seeking vengeance for a capital crime is considered criminal. Even if this person is a cleric in a benefice or in the sacred office, in addition to the irregularity, he commits mortal sin, as stated in chapter Sent. where it is forbidden for clerics to involve themselves in a case of bloodshed. He will not be irregular who accuses a guilty person solely to obtain compensation for damages, always with the protestation that he does not wish to incur the penalty of bloodshed, c. Prælatis de homic. And this applies both in his own case, and in the case of relatives up to the 4th degree, or of servants, or of his own parish. Suar. Castr. Conc. Salm. with Bon. and others. And this is true even if the protestation is made feignedly, Suar. Bon. Castr. and Salm. with many others; and even if it is made after the accusation, but before the sentence, Bon. Sayr Pel. and Salm. (2). 147. — Dispensations regarding irregularities arising from defect are all reserved to the Pontiff, with regard to seculars; with regard to regulars, see treatise 20. de Priv. n. 106 and 107. OF THE SACRAMENTAL PENITENTIARY. 148. — I have considered it appropriate to note here the principal faculties of the Sacred Penitentiary, so that confessors may know for which cases they can appeal to it. Benedict XIV, on April 13, 1744, by a bull that begins with "Pastor bonus" (which is number 95 in his Bullarium, volume 1), confirmed several faculties granted by other pontiffs, and added others to the Sacred Penitentiary. Therefore, in the aforementioned bull, it is stated that the Sacred Penitentiary can I. absolve from any cases and censures, even those subject to the censure of excommunication, for both regulars in both forums; for seculars, both ecclesiastical and lay, also in both forums from public censures imposed

by law; and also from censures imposed by a judge, if the jurisdiction of the judge has expired, or if the one imposing the censures has reserved them for the Apostolic See, provided that the judge and the party have been satisfied. If, however, a party unjustly refuses the offered satisfaction, the confessor can determine a suitable satisfaction. II. It can absolve hidden heretics, provided they have not committed any external acts by which others could recognize them as heretics; also public heretics, in the case where it is not necessary to denounce accomplices. It can also absolve princes, administrators of public affairs, and bishops and other prelates from cases subject to the censure of excommunication. III. It can grant dispensations for hidden irregularities and incapacities, even from voluntary homicide, but not so that after homicide they can be promoted to the episcopate. Also from incapacities and irregularities due to heresy, provided they have been completely hidden. IV. It can grant dispensations to those who have committed homicide and other crimes, so that they may be admitted to a religious order and then become priests. V. It can grant dispensations for those who have been improperly promoted so that they may secretly receive orders omitted, without observing the intervals and times, but not sacred orders on the same day. VI. It can grant dispensations for those who have been secretly ordained with simony. VII. It can validate the titles of beneficed persons (1) Lib. 7. n. 461. — (2) N. 468 in fine.

[*Latin ed. p. 628*]

616 TRACT. XIX. ON DISPENSATIONS AND IRREGULARITIES. Concerning those with hidden impediments. VIII. It is permissible to remit a portion of the simoniacal price due to the debtor's poverty. IX. It is permissible to remit improperly received fruits to the French, Belgians, Poles, and others; but to settle accounts with the Italians, Spaniards, etc., and even to remit to the poor. X. It is permissible to remit a portion of what was improperly taken or retained, if the owner is uncertain, and the offense is hidden, and the offender is poor, providing the remainder is paid to the poor, or to pious works, in the places, if possible, where those things were taken. XI. It is permissible to absolve those who have received gifts from religious, provided they do not exceed ten scudi, or even if they exceed that amount, after prior restitution, or after fulfilling the obligation to make amends. XII. It is permissible to grant a dispensation to women who are not virgins, so that they may enjoy a legacy left to virgins, in cases of hidden impediments, and in the forum of conscience; or to virgins, so that they may enter a monastery of women penitents. XIII. It is permissible to relax oaths that are not to the advantage of another. XIV. It is permissible to change simple vows, even those of chastity, by granting a dispensation, or to postpone the fulfillment of the vow. XV. It is permissible to grant a dispensation by changing to other prayers, or other pious works, in place of the recitation of the Divine Office. XVI. It is permissible to grant a dispensa-

tion concerning hidden matters with religious, from any irregularities, impediments, and penalties, but not concerning public defects regarding generation; and in public matters, only after consulting with superiors. XVII. It is permissible to absolve apostates from censures, even if they relapse, provided they do not return within a specified time; a dispensation may be granted concerning any irregularity they may have contracted, until their actual return. It is also permissible to grant them permission to enter another order. XVIII. It is permissible to grant permission to enter a less strict religious order, provided that regular observance prevails there; however, it is not permissible to grant permission to enter the Order of St. Benedict of the older observance, nor to similar congregations of any order. Likewise, concerning nuns beyond the mountains. XIX. It is permissible to absolve and grant a dispensation concerning defects and censures, even for the violation of enclosure. XX. It is also permissible to grant a confessor to nuns (see what is said about this in book 6, number 576). XXI. When the Apostolic See is vacant, one has the faculty in the forum of conscience, even in cases in which, when the Pope is living, one would not have it, but with the understanding that, if they do not present themselves to the new Pope, this faculty shall pass to the signature after the entrance of the Cardinal Penitentiary into the conclave. Other matters pertaining to the subject of marriage, see book 6, number 1144. Other less necessary matters may be observed in the aforementioned bull, *Pastor bonus*. Finally, note that when letters from the Holy Penitentiary are entrusted to a master of theology, or a doctor of canon law, they may be executed by confessors of the Society of Jesus, designated by the General or Provincial, with the permission of the latter, as granted by Gregory XIII, on April 3, 1582. And likewise, it may be done by jubilate readers of the Order of Friars Minor, by the concession of Innocent XI, on November 27, 1679. And therefore, it may be done by all religious who share in their privileges; thus reports Elb. vol. 3, conf. 20, p. 506, no. 513.

[*Latin ed. p. 629*]

OF COMMON PRIVILEGES. 617 TREATISE XX. ON PRIVILEGES. CHAPTER I. ON COMMON PRIVILEGES. 1. The difference between a privilege, a dispensation, and a license. — 2. When a privilege derogates from common law. — 3. When the holder of a privilege is bound to use it. — 4. Whether, outside of the sacrament of penance, etc. — 5. Regarding clauses such as, for example, "provided that it does not contradict the sacred canons," etc.; "supplementing deficiencies," etc. — 6. 7. 8. On the interpretation of privileges. — 9. 10, and 11. On revocation. — 12. On privileges of religious orders that have been revoked, with the declarations of St. Pius V. — 13. On rescripts of grace and justice, whether they expire with the death of the Pontiff. — 14. In how many ways can a privilege cease? — 15. How can it cease through revocation? — 16. On express

revocation. — 17. On tacit revocation, and whether the revocation must be announced, or at least made public. 1. A PRIVILEGE is defined as: A private law, granting some special benefit. A privilege differs from a dispensation, which exempts from the law, and is therefore always odious; it also differs from a license, which is granted only for a few acts. We will speak in particular of privileges in their proper place below; here we will only note certain rules to be observed regarding common privileges. 2. — And I. In order for a privilege to derogate from common law, it is not necessary to have a derogatory clause; for it is presumed that the prince already knows the common laws. However, this is excepted in 1. when the privilege could not achieve its effect without this express derogation. 2. If in the law to which it derogates, there is a clause: "Notwithstanding any privilege"; this is understood, unless the privilege contains the clause "from certain knowledge" or "by the fullness of power" (1). 3. When the privilege is contrary to some custom, or municipal law; for in these cases, no derogation is made, unless specific mention is made of them (2). 3 — II. The holder of a privilege is not, in general, bound to use it. Reg. 61. Jur in 6. but this is excepted in 1. if, by not using it, he would cause serious harm to his neighbor: however, understand this if it is of itself, and not as a consequence; for example, if a confessor has the privilege of absolving from reserved sins, he is bound to use it after hearing the confession (3). 2. If the privilege benefits the common good, as is the case with the privilege of immunity, in which case everyone is bound to use it, as in chapter. If diligent, of competent forum. 3. If the privilege removes an impediment to the observance of a precept; for example, if a sick person has a private oratory at home, and can easily hear the sacred rites, he is bound to use the privilege (4). 4. If the privilege is not personal, but real, attached to a place, or to a dignity, or to a status, as are the privileges granted to bishops and religious (5). 4. — III. He who has a privilege for the forum of penance, etc., to absolve from censures and ecclesiastical penalties, can very probably use it even (1) Salm. tract. 18. c. n. n. 42 and 43 with others. — (2) Suar. de leg. 1. 8. c. 14. n. 4. Castropal. tom. 1. tract. 3. D. 4. p. 10. n. g. and Salmant. loc. cit. c. 1. n. 8. with Pelliz. Tamb. etc. — (3) See Salm. tr. 18. c. 1. n. 11. with others. — (4) Suar. 1. 8. de leg. c. 23. n. 8. and c. 35. n. 3. and 6. Pal. p. 7. n. 3. Banch. de Matr. l. 9. D. 6. n. 24. Salm. c. 2. n. 13. with Sylvest. Avila, etc. — (5) See Salm. c. 1. p. 37 and 15.

[*Latin ed. p. 630*]

618 TRACT. XX. ON PRIVILEGES. outside the sacrament, even if the power was conceived in terms: To the confessor priest (1). 5.—IV. Speaking of clauses: The clause "As if" implies that the privilege is valid only when another (according to the form granted) is valid at least from the beginning, even if it has been revoked or not accepted afterwards, as noted by Father Mazzotta. Otherwise, if the first privilege is null, the second will also be

null, provided that the second does not express what is granted (2). However, this applies (as the aforementioned authors say) when it is said: "As if," and not when it is said, "as was granted," etc., as Bonacini and Garcias state apud Salmanticensus. The clause, "Unless it is contrary to the sacred canons," is understood only in those canons in which it is expressly stated: "Notwithstanding any privilege" (3). The clause, "Supplementing the deficiencies," is understood only in relation to the deficiencies of those things which are required only by positive law, and which are only accidental, and not in relation to natural or substantial deficiencies, such as if the supplicant were excommunicated, or if the supplication were surreptitious or fraudulent, or if the deficiency were concerning the cause or the person of the supplicant (4). Other clauses can be seen apud Salmanticensus (5). 6.—V. Speaking of the interpretation of privileges, several things must be noted. Note 1: every privilege must be interpreted in such a way that it is neither useless nor burdensome to the one who has the privilege (6). 2. Privileges can only be authentically or legally interpreted by the prince, or by others to whom the prince has entrusted this authority. Doctrinally, however, any learned man can interpret them, to whose resolution it is permissible to acquiesce, as all affirm; and when a privilege prohibits any interpretation, it is to be understood of the authentic and legal interpretation (7); or it must be understood to be the interpretation that is made expressly, as is said of laws (tract. 2, n. 75). 3. By Clement IV, and by other pontiffs, bishops are prohibited from legally interpreting the privileges of religious orders. Only to experts and other judges in favor of religious orders has it been granted by Alexander VI and Paul III (when the Apostolic See cannot be consulted). The same has been granted to generals, visitors, and even provincials and immediate prelates, whenever they consult experts. The same applies to the interpretation of rules, constitutions, and customs. In the same way, these prelates can also withdraw or limit the use of privileges to their subordinates (8). 7.—Note 4: in general, speaking of privileges, every privilege must be interpreted broadly, as we have from chapter Olimpia 6, on the verb "sign," where it is said: "With benefits of princes, interpreted most broadly, etc." And from the last lines of ff. de Constit. princip. On the contrary, odious privileges must be interpreted strictly: these are those that derogate from common law, or from particular statutes and customs, provided that these statutes are not contrary to common law, or provided that the privilege is not inserted in the body of the law; therefore, they say (1) Suar. lib. 8, de leg. cap. 6, n. 15. Castrop. D. 4, p. 2, 2 5, n. 6. and Salm. tr. 18, c. 1, n. 33. with Sylvest. Tamb., etc., against others who probably also deny. — (2) Suar. lib. 8, de leg. c. 15, n. 2. Castrop. D. 3, p. 2, 2 8, n. 1. Salm. cap. 1, n. 59. with Bonacini, etc., and Father Mazzotta, vol. 1, de Privil., page 221 v. Scuto. — (3) Salm. tr. 18, c. 1, n. 50. with Nav. Suar. Garc., etc. — (4) Salm. cap. 1, n. 51. with Barbosa and Tamb. — (5) Cap. 1, v, n. 40. — (6) Salm. cap. 1, n. 70 and 71. — (7) See Salm. tr. 18, c. 1, n. 72 and 73. — (8)

Nos. 74, 75, and 76.

[*Latin ed. p. 631*]

OF COMMON PRIVILEGES. 619 Sanch. and Mazzot. (1), all real privileges are to be interpreted broadly; for because of their perpetuity, they are considered as incorporated into common law. However, this is not the case if another privilege were to be granted that would render the first invalid, or if the privilege contained the clause "from certain knowledge," or "by his own motion"; nor is it the case if the privilege is to absolve, dispense, or communicate it to others (2). Privileges, however, that prejudice others, such as those intended to obtain more benefices, or to confer vacant benefices, or that are contrary to regular observance, are to be interpreted strictly, even if they were granted by his own motion (3).

8. It must be understood that this pertains to privileges granted to particular individuals; but those that are granted to an order, a convent, a community, or for another pious cause, are to be interpreted not only broadly, but also very broadly, even if they are contrary to common law, or to the rights of a third party, as the doctors commonly affirm (4); for privileges granted to communities are presumed to be compensation for services rendered, and therefore all are considered as favorable, according to the law, "As a person" (in iure civili), concerning religious matters (5).

9. VI. Speaking of the communication of privileges, note that: 1. Mendicant religious orders communicate fully among themselves regarding past and future privileges, both concerning persons and concerning places, festivals, and indulgences, as is stated in the bull of Sixtus IV, Clement VIII, and Leo X (6). And this applies even if a religious order, to whom a privilege has been granted, has not accepted it, or has not used it. Furthermore, when a privilege granted to one religious order is extended to another, it is understood to be extended also to the others (7). Furthermore, these mendicant religious orders communicate privileges to other religious orders, or congregations, or monastic or non-monastic colleges (8). And this is valid, even if in the privilege granted to another religious order, or congregation, there is a clause that it is not to be communicated: for in other bulls concerning communication, it is stated that any impediment to communication is removed (9). Such privileges are enjoyed by both converts, for they are truly religious (10), as well as by novices, as declared by Clement VIII; and this is the common opinion (although some few may say otherwise), as stated by Suar., Sanch., Castr., etc. (11). Religious who have been promoted to an episcopate also enjoy these privileges, provided that it is not a matter in which, if bishops were to use it, some prejudice to the religious order would result, such as residing in a monastery, granting suffrage, etc. (12). Tertiary and tertiaries (or blessed) who are subject to mendicant orders, and who wear the habit of the religious order, and who have a vow of chastity (with certain exceptions), also enjoy these privileges,

but to the extent that they are capable. Confratres of the scapular, and of the cord (called Cordon), etc., enjoy only and participate in all indulgences and remissions of sins, but in nothing else (13).

10. Note 2. Nuns, both of mendicant and non-mendicant orders (1) Sanch. de Matr. l. 8. D. r. n. 4. et Mazzotta loc. cit. pag. 225. c. 2. v. Resp. — (2) Salm. tr. 18. c. 1. n. 78 ad 80. — (3) Ibid. n. 85 et 84. — (4) Suar. de leg. l. 8. c. 27. n. 7. Castrop. D. 4. p. 10. n. 6. Mazzotta loc. cit. et Salm. c. r. n. 27 et 48. et iterum n. 85 et 86. cum Azor. Laym. Sylv. Bonac. Henriq. Coninch. Lezana, Barb. et alii. — (5) Vide Salm. c. 1. n. 25. ad 27. — (6) Ibid. n. 88 et 89. — (7) Ibid. n. 98 et 99. — (8) Ita communissime Salm. tr. 18. c. 1. n. 90 cum Rodr. Pelliz. Tambur. etc. — (9) Salm. tr. 18. c. 1. n. 107. cum Rodr. Basseo, Miranda, Ben. Diana, Donato, etc. — (10) Vide Salm. tr. 15. de Statu Relig. c. r. n. 35. — (11) Suar. in 2. S. Thom. tom. 4. de Relig. tr. 10. lib. 9. c. 1. n. 18. et Statu Relig. c. r. n. 35. — (12) Suar. in 2. S. Thom. tom. 4. de Relig. tr. 10. lib. 9. dict. tr. 15. c. 5. n. 43. cum Suar. Lez. et Castrop. — (13) Salm. tr. 18. c. 1. n. 94. cum aliis.

[*Latin ed. p. 632*]

620 TRACT. XX. ON PRIVILEGES. Mendicants enjoy the privileges of monks of their own order, and consequently, of any other order, in all matters to which they are capable of participating (understand this to mean favorable matters). This holds true even if the privilege speaks only of laypersons, as is deduced from the bull of Leo X. Conversely, monks enjoy the privileges of all orders of nuns, because they participate (as stated above) in the privileges granted to any religious order, congregation, or monastery (1). But returning to the nuns, even those subject to the Pope or a bishop enjoy these privileges; and thus, when a privilege is granted to religious allowing them to be absolved or dispensed, nuns subject to a bishop can indeed be absolved and dispensed by the same bishop. And this applies even if the privilege mentions only nuns who are subject to the rules (2). 11. Note 3. Privileges are not communicated when they are odious, or contrary to their own statutes, so that they prejudice the good, or the common observance of the religion (3). Note 4. Privileges granted to someone not as a particular person, but by reason of their office, or dignity, or as a member of that community, are understood to be granted to all others of the same office, or of the same community. And privileges granted to subordinates or lower prelates are also understood to be granted to higher prelates (4). Similarly, privileges granted to a particular community, or to a church, or to individuals of a particular community, but as members of that community, are also understood to be granted to other religious, both of that order, and of others who have communion, provided that the same, or a similar, reason applies (5). But this is not to be understood of privileges that are granted to a particular congregation for a determined time, or by particular briefs granted to a particular monastery for some special reason,

or when it is a matter of things that are usually difficult to grant (6). 12. — VII. It is certain, as is stated in proposition 36, that religious are no longer able to use privileges that have already been revoked by the Council of Trent. However, certain declarations of the Council made by St. Pius V in his bull Etsi mendicantium must be considered. These are: 1. That seculars can hear the sacred services and sermons in the churches of regular canons. 2. That a bishop cannot grant permission to enter the monasteries of exempt nuns. 3. That the fourth of funerals is understood only as that which is offered (7). 4. That confessors of exempt nuns, and preachers of regular canons in their own churches, are not examined by the ordinary; but with regard to confessors, this privilege has been abrogated by various apostolic constitutions, and especially by the bull Apostolic ministerii, issued by Innocent XIII in the year 1723, and confirmed by Benedict XIII, on September 23, 1724. There, in § 18, it is declared that confessors of exempt nuns must be examined and approved by the bishop of the diocese, "notwithstanding any contrary custom, even an ancient one." 13. — VIII. It is necessary to distinguish between a rescript of grace, such as to absolve, dispense, etc., and a rescript of justice, such as to exercise jurisdiction (1).

(1) See Salm. tr. 18. on Privileges, chapter 1, note 9.

(a) Suar. de leg. book 8, chapter 10, note 7. Bonac. disp. book 1, question 3, point 7, § 2, note 4. and Salm. tr. 18, chapter 1, note 93, with Castr. Lez. Pelliz. Bordonio, Boss. and others against a few.

(5) Castrop. dist. 4, § 9, note 2. and Salm. c. 1, note 100, with Pelliz. Lez. Portel. Tamb. Barb.

(4) Salm. c. 1, notes 110 and 111.

(5) Salmant. ibid. with Pelliz. Garcia, Quintan. Tamb. etc.

(6) Salm. c. 1, note 118, with Peyrin. Tamb. Merula, etc.

(7) See Salm. tr. 18, chapter 1, note 157.

[*Latin ed. p. 633*]

OF PRIVILEGES IN GENERAL. 621, namely, the right to be called by a certain title, etc. In a rescript of grace, it is said that the grace is *effected* when the delegate is considered a necessary executor; the grace is *to be performed* when the power to dispense is granted, and the delegate is left to his own judgment. A rescript of justice expires with the death of the prince, provided the matter is still pending; and the same applies to a rescript of grace to be performed. Conversely, this must be said of a rescript of grace for absolution, for receiving orders outside the proper time, concerning a private oratory, etc. (1). A privilege granted with the clause "Until I will it" probably does not expire after the death of the grantor (2): see what is said in tract. 16, n. 82. However, if the duty of the delegate is expressed in the grant, upon the death of the delegate, it also passes to the successor (3). 14. - IX. A privilege can cease in many ways: 1. by the

expiration of the established term. 2. By the cessation of the final cause: understand that when a privilege is granted under the condition of that cause; but when it is granted absolutely, there is a very strong opinion that, even if the final cause ceases, the privilege itself will not cease; nor does it cease, even if we have once used the privilege (4), according to what we said about dispensation, c. 2, n. 66 at the end. 3. By the renunciation of the privileged person; it should be noted that private individuals cannot renounce the privileges of a community; and for the renunciation to be valid, it must be made in the hands of the one who granted the privilege, and accepted by him (5). 4. By contrary use, or by non-use; however, in doubt, the presumption is always for use. But in this, it must be noted that gracious privileges which do not burden others, such as absolution, dispensation, or fasting, and similar things, are never lost by non-use, and even by contrary use, even for a very long time (6). Privileges that are burdensome to a third party, such as not paying tithes, and the like, are extinguished by contrary use, and also by privative non-use (not merely negative non-use), which occurs when the privileged person, knowing of his privilege, refuses to use it when the opportunity arises. This applies, provided that there is no clause in the privilege stating that it is to be used at his own discretion (7). Furthermore, this is understood in the external forum, for in conscience, he does not lose the privilege who does not have the intention of renouncing (8). A privilege can also cease by abuse, either in whole or in part (9). 15. - It ceases 5. by the revocation of the prince. In this, it must be distinguished between gratuitous privileges and remunerative privileges, and burdensome privileges; if the privilege is merely gratuitous, it can be revoked validly even without a just cause: although this is at least not excused from venial sin if there is no scandal (10). However, if with the privilege, ownership of some property was transferred to the privileged person, it cannot be revoked, nor licitly, nor validly, unless for a most urgent reason of the common good, or for a grave offense, or for those reasons for which any donation can be revoked (11). But if the privilege is remuneratory, either for justice or for gratitude, a just cause is always required for it to be validly revoked. And if it is also burdensome, such as, for example, one granted for a price received, or for some burden (1), Castr. d. 3. p. 16. 2 4. n. 11. Sanch. de Matr. 1. 8. dispt 38. n. 45. Salm. tr. 18. c. 1. a n. 141, ad 146. cum Suar. — (2) Salm. tr. 18. c. 1. n. 149. — (3) Ibid. n. 150. — (4) Ibid. c. 2. n. 3 et 4. — (5) Ibid. n. 5 ad 8. — (6) Suar. de leg. 1. 8. c. 54. n. 17. Bonac. D. 1. 9. 5. p. 8. 2 5. n. 2. n. 3 et 4. — (7) Castr. p. 18. n. 4. Bonac. loc. cit. n. 3. et Salm. n. 14. cum Laym. Pont. Lez. Garcia, etc. — (8) Vide Salm. tr. 18. c. 2. n. 18. — (9) Ibid. n. 17. — (10) Pontius 1. 8. de dispens. c. 19. n. 31. Castrop. p. 18. 2 3. n. 3. et Salm. tr. 18. c. 2. n. 37. cum Suar. Sanch. Bon. etc. — (11) Castr. c. 21. 2 2. n. 2. Bonac. d. 1. 9. 3. p. 8. 2 3. n. 5. Suar. de leg. 1. 8. c. 37. n. 7. et

Salm. c. 2. n. 29. cum Pont. Garc. Lez. etc.

[*Latin ed. p. 634*]

622 TRACT. XX. ON PRIVILEGES. When a privilege is granted, compensation is required if it is to be revoked (for reasons other than those that would normally justify revocation). This applies to remunerative privileges granted for the sake of justice, as the common doctors generally state (1). 16.—Revocation of privileges can be either explicit or implicit. In the case of explicit revocation, it is generally sufficient to include a general clause stating that all privileges are revoked, notwithstanding any existing privileges, etc. However, the following are excepted: 1. Privileges granted by contract, whether they are burdensome or remunerative for the sake of justice (as mentioned above); in such cases, specific mention of the merits in question must be made. 2. Privileges that contain a clause stating that they are not to be understood as being revoked unless specific mention is made. 3. Privileges of religious orders that also require specific mention, because they are remunerative, and they appear to have a clause that implies a derogation from future revocation, unless specific mention is made of them, as Rodr. Portel and Miranda state in P. Mazzotta. 4. Privileges that are included in the body of the law, because in such cases they are true laws, and in order to revoke them, a specific clause is required: "Notwithstanding the laws to the contrary, etc." (2). The same is asserted by Bonac Sanch., Castrop., and Salm., along with Molin. Pelliz., and others (contrary to Pontium), that privileges granted by a general council are not considered revoked unless there is an explicit clause stating: "Notwithstanding any constitution, even one issued by a general council." This is inferred from chapters "Ex parte" and "Ultimo" of the chapter on monastic chapels (3). Pontium objects to this, citing Church practice and a certain declaration by St. Pius V. However, Castropalaus and Garcia respond that this assertion is based solely on a particular statement by St. Pius V, in which he says that concessions signed by the Pope's own hand do not require any Tridentine revocation, neither general nor special. All of the aforementioned limitations are understood to apply unless it can be shown that the contrary was intended, as all of these doctors commonly affirm; therefore, if the revocatory law contains a clause stating "from certain knowledge," or "by one's own motion," or "by the fullness of power," then all privileges are revoked, regardless of their qualification, except for burdensome ones; or when the revocation would prejudice a right acquired by a third party (4). 17.—As for implicit revocation, privileges previously granted are understood to be revoked by any universal law to the contrary, even if such a clause is not present in the law, when the law itself, or a new privilege granted to others, could not achieve its intended effect unless the previously granted privileges were revoked; for it is not presumed that the legislator intends to enact a useless law, or to grant a privilege that is illusory, whether it is a general or a partic-

ular privilege. However, it must be understood that this applies when the previously granted privileges are known to the legislator, as is presumed to be the case with all privileges included in the body of the law. This is not presumed to be the case with privileges that exist outside the law; therefore, specific mention must be made of these (5). Some, such as Sotus, Henriq., and Quintan., to whom Salmant. adheres in a certain passage (6), assert that a privilege is...

[*Latin ed. p. 635*]

OF THE PRIVILEGES OF ECCLESIASTICS. 623. These privileges remain in full force as long as no revocation is announced to the civil authority or to the religious order. However, even if Salmanticensus and others retract this view in another place (1), they do so with the understanding that, as we have stated when discussing laws, this is sufficient to invalidate the privilege (as we said when discussing laws, see above, treatise 2, article 5 to 8), provided that the revocation is publicly announced, and two months have passed since the publication, so that the privileged parties may receive notice, even if, in fact, it does not reach them. We have now discussed privileges in general; in the following chapters, we will discuss the privileges of particular ecclesiastical persons, bishops, and religious. CHAPTER II. OF THE PRIVILEGES OF ECCLESIASTICS. 18. Of those things from which ecclesiastics are exempt from secular authority. — 19. Of the privileges of canon and forum with regard to persons. — 20. With regard to goods. — 21. Who enjoys these privileges. — 22. Of benefices. — 23. Of those who have received tonsure. — 24. Of those who have laid down their habit. — 25 to 28. Of the immunity of pious places. 18. ECCLESIASTICS are, by divine law, exempt from secular power with regard to spiritual matters, or matters purely ecclesiastical, such as ordinations, the election of prelates, etc., as is clear from canon 3 of the Council of Trent. However, with regard to persons and ecclesiastical places, the question is whether they are exempt by divine law? Many deny this, such as Lessius, Cajetan, Becanus, and Salmanticensus (2). Many others affirm it, such as Suarez, Azorius, Layman, etc., and they prove it from various texts, and especially from chapter 6 of the Council of Trent, which states: "The immunity of churches and ecclesiastical persons is established by divine ordinance and canonical sanctions." Nevertheless, it is certain that ecclesiastics are not subject to the secular forum, either by canon law or by civil law (3). However, they are bound in conscience by those civil laws that do not contradict their status, not by coercive force, as is said, but by directive force, so that they may be conformed to the community (4). 19. Therefore, ecclesiastics enjoy: I. Exemption with regard to their persons. Besides the privilege of canon law, by virtue of which those who unjustly strike them incur excommunication (as we have discussed in treatise 19, number 48 and following), clerics enjoy immunity from being punished

by the secular court, as is clear from the laws cited by Becanus (5). And although civil law exempts them only in civil cases, and reserves the right to recognize them in criminal cases, it does not condemn clerics except after degradation; nevertheless, canon law completely exempts them (6). However, despite this, in some cases, secular power may proceed to the imprisonment of clerics, such as, for example, if someone were found at night carrying prohibited weapons, or without clerical garb, or if someone were found committing some crime in flagrante delicto; in such cases, secular power may proceed to their imprisonment, and then remit them to the ecclesiastical court; if, however, they are found during the day, they may be deprived of prohibited weapons. Secular power may also, in some cases, punish them (but not with the death penalty), if they are plotting rebellion against the prince, or if they incite the people to sedition, and have not been punished for this by their own bishop. Furthermore, it is probable that secular power may inflict the penalty of (1) Salm. treatise 18, on Privileges, chapter 2, number 45. — (2) Treatise 3, on Orders, chapter 7, number 6. — (3) See Jura apud Lessius, on Justice, book 2, chapter 33, doubt 3. — (4) This is common with Salm. treatise 8, chapter 7, number 16. — (5) On Sacraments, chapter 26, question 9. — (6) See Salm. treatise 8, chapter 7, from number 24.

[*Latin ed. p. 636*]

624 TRACT. XX. ON PRIVILEGES. Clerics who are notoriously sodomites are deprived of all clerical privileges by Pope Leo X and St. Pius V (1). Furthermore, for any other crime, clerics cannot be punished by the secular court, as stated in chapter 6, at the end, concerning the life and honor of clerics, and in chapter 25, concerning excommunications, paragraph 20. Clerics enjoy exemption from the secular court with regard to their own property, whether ecclesiastical or acquired in any other way; therefore, they are not subject to any tax, as stated in chapter "Quia," and in chapter "Clericis," concerning ecclesiastical immunities, paragraph 6, and in the decree "Sancimus," paragraph 22, concerning sacred ecclesiastical matters (2). However, clerics who are merchants concerning only ecclesiastical goods that have already been designated for trade are deprived of all exemption, as stated in chapter 6 of "Quanquam" concerning tithes (3). Regarding other personal property, they are deprived of this privilege after a third warning (4). Furthermore, it should be noted that in cases of urgent necessity, the prince may extract grain from the houses of clerics and sell it (5).

21. Those who enjoy these privileges, both with regard to persons and to property, are first of all all religious orders with their novices and tertiaries, and also the Blessed Franciscan tertiaries, Carmelites, etc., who wear the habit along with the vow of chastity, as declared by the Holy See. Furthermore, the Knights of St. John, St. Alcantar, and Calatrava, as proven by

Bonacina, Filliuccius, and Diana (6). Furthermore, all clerics who are established in the sacred ministry. Regarding those who are in minor orders, or simply tonsured, the Council of Trent states in Session 23, chapter 6, concerning reforms: "They do not enjoy the privilege of the forum, unless they hold an ecclesiastical benefice, or wear the clerical habit and tonsure, or serve a church by order of the bishop; or are in a seminary of clerics, or in a school, or university, with the permission of the bishop, as if they were on their way to receiving higher orders." And clerics who are married, who wear the habit and tonsure, and serve the Church, also enjoy this privilege; but in the last chapter of "De tempo ord.," paragraph 6, it is forbidden for married men to be tonsured, unless they intend to enter religion, or to be ordained in the sacred ministry, with the prior consent of their wives (7).

22. Therefore, those who enjoy the privilege of the forum are: 1. Beneficiaries, even if they do not serve the Church, nor wear the habit and tonsure, as is probably inferred from the Council, as stated by Salm. with Filliuccius, Diana, and Rodriq. against Suar. And even if they do not receive the fruits of the benefice, nor do they possess it; it is sufficient that they only hold the title, as stated by Garc., Fill., and Diana against Salm. It is also sufficient to have a chaplaincy, or a prebend, which are considered as true benefices; but a pension is not sufficient (8).

23. 2. Clerics in minor orders, and those who are tonsured, provided that they wear both the habit and the tonsure, according to what the Council states: "Those who wear the clerical habit and tonsure." And as many doctors probably believe, with Bastrop and Barb. against Salmant., who interpret the word "habit" and "tonsure" as "habit or tonsure," so that they say that either one is sufficient (9), provided that they also serve the Church; but with regard to serving the Church, it is sufficient that they serve some church, even if it is not designated by the bishop, as declared by the Holy See apud card. Lambertini (10).

24. As for clerics who are established in minor orders, they are deprived of the forum (for another).

(1) Salm. tr. 8. c. 7. n. 27 ad 29 et a n. 18 ad 20.

(2) Ibid. n. 35 et 55.

(3) Salm. n. 54 cum Less. Mol. etc.

(4) Salm. tr. 8. c. 7. n. 17. cum Diana. Molf.

(5) Vide Salm. c. 7. a n. 56 ad 55.

(6) Vide nostrum opus morale lib. 6. n. 827. v. Eodem.

(7) Vide Salm. tr. 8. c. 7. n. 6a et 68. cum aliis.

(8) Vide nostrum opus lib. 6. n. 827.

(9) De Synodo l. 7. c. 69. n. 4.

[*Latin ed. p. 637*]

OF ECCLESIASTICAL PRIVILEGES. 625 concerning the privilege of canons) the threefold warning is not required, because this is required only for benefices, and for those ordained in the sacred office, as is deduced from chapter [citation needed], concerning sentences, exceptions, or for laymen who engage in secular affairs, as is stated in c. [citation needed]. However, it suffices that they have relinquished their habit and tonsure, as has been declared repeatedly by the Holy See, and as doctors commonly affirm (2), provided that they have relinquished them for a long time, as noted by Salm. with Bonac., Suarez, Barbos, and others. Although these clerics cannot claim the benefit of the law, the bishop can nevertheless restore them to the secular forum, according to a declaration of the Holy See approved by the present Supreme Pontiff (3). Those clerics who resume their habit enjoy the privilege by right, provided that they do not do so fraudulently: this fraud is presumed when someone has already been summoned to the secular forum in a civil cause, or has already been imprisoned for a criminal cause, or has indeed left prison under caution; as stated by Salm. with Bon. (against Gutt. and Cebal.), and by Cardinal Lambertini with several decrees of the Holy See (4). A major question is whether the secular power can hear causes against ecclesiastics. Some theologians absolutely affirm this: but others, more commonly, admit it only when it is either impossible or difficult to have recourse to higher ecclesiastical superiors (5). 25. The ecclesiastical immunity of places with regard to asylum for delinquents belongs by right, both ecclesiastical and civil, to all churches, even those to which the interdict has been imposed, or to the polluted, and even to the excommunicated (unless they have been utterly profaned by the authority of the prelate), and to their chapels, sacristies, cemeteries, even those separated from the church, walls, bell towers, roofs, atriums, steps of the atriums, with forty paces beyond for cathedral churches, and thirty for other churches (but this should be understood for those that are located outside the walls of the city, or town), provided that there is no public road, or any secular house: otherwise, it is different if the house belongs to a cleric (6). The same immunity is enjoyed by hospitals in which there is a public chapel; oratories erected by bishops, the bishop's palace, and the houses of religious with their dormitories, cloisters, gardens, and porticoes in front of churches, or monasteries (7). 26. All delinquents, provided they are Christians, even heretics, or those under interdict, or those imprisoned, who, having broken out of prison, have fled to the aforementioned sacred places, enjoy this immunity. And in this, any custom to the contrary is condemned, c. [citation needed], from the sentences of excommunication and the authentic decree concerning sacred churches (8). However, public robbers, despoilers of fields, who

commit homicide by treachery, or by assassination (but the reigning Supreme Pontiff excepted all homicides for the entire Church), or in the church itself, or in the cemetery, are excepted; moreover, heretics, and rebels against the same person, the prince (9). And in cases clearly excepted, the secular judge can, on his own authority, extract delinquents from the church, according to common practice. In doubt, the judgment of the exception belongs to the bishop; so say Salm. and others (10). Apart from the excepted delinquents, all others enjoy immunity.

(1) See our work, book 6, no. 827.

(2) In Card. Lambertini de Synodo, book 5, chapter 11, from no. x, and in Salm., treatise 8, chapter 7, no. 65.

(3) See Lamb. in the aforementioned place.

(4) Salm. in the aforementioned place, no. 67, and Card. Lamb. de Syn., chapter 67, no. 1.

(5) See Salm., treatise 8, chapter 7, no. 76.

(6) See Salm., treatise 18, chapter 5, from no. 86.

(7) Ibid., from no. 84 to 88.

(8) Ibid., no. 89.

(9) Ibid., no. 96, with Suar., Castr., Pelliz., Guttier., etc.

(10) See Salm., from no. 96.

[*Latin ed. p. 638*]

626 TRACTATE XX. ON PRIVILEGES. How those in debt rejoice when they flee to the Church (1). 27.—The question is, whether clerics and religious enjoy the same immunity with respect to their superiors: many affirm this, such as Barbos, Bardon, Guttier, and this is supported by a certain declaration of the Sacred Congregation; and this opinion is considered most probable, as Salm states. Nevertheless, others, following the common opinion of Suar, Castropal, Laym, Bon, Sylvestri, and others, deny that this immunity has such force by virtue of the bull of Gregory XIV, which speaks only of laypersons with respect to this immunity, as in the case of laypersons who flee to the Church, etc., but rather by virtue of the common and already received custom; otherwise, religious who always reside in their monasteries would find it difficult to be punished. Just as superiors in the Church (bishops and their vicars) can extract their own subjects from the Church, so too, if it is necessary, they can grant permission to the secular court to do the same (2). However, a bishop cannot extract his clerics from the churches of regular canons, not because of immunity, but because those are places exempt from his jurisdiction (3). 28.—Those who extract, or who attempt to extract, incur excommunication by that very act, from which they cannot be absolved except by the Pope, or by the bishop; for the decree of Clement VIII removes the power to absolve even simple confessors, although they are regular (4).

It should be noted that religious who expel someone from their churches or monasteries for the purpose of avoiding some inconvenience or danger, do not violate immunity, and can rightly do so (5). CHAPTER III. ON THE PRIVILEGES OF BISHOPS. 29. I. On the power of dispensation. Whether a bishop can dispense in cases of irregularity arising from sin and from doubt.—30. In which places the Tridentine Council is not accepted, etc.—31. He who comes in the name of a bishop.—32. Concerning foreigners. And whether a bishop can absolve from papal cases outside of confession.—33. How a hidden fault is to be understood.—34. Whether a bishop can delegate this power.—35. Whether from cases reserved by other bishops, etc.—36. If from cases after the Council, etc.—37. Whether a bishop can absolve a confessar who is complicit in a shameful sin.—38. Whether bishops can absolve from cases reserved by the bull of Clement (Cenæ).—39. Whether they can dispense in cases of irregularity incurred through heresy.—40. Whether they can absolve those who are impeded.—41. And whether through others.—42. Who are considered impeded.—43. Concerning perpetual impediments.—44. Whether these are bound by a letter, etc.—45. Whether they are bound at least to have recourse to the bishop? What if they cannot have recourse, etc. What if they are at the point of death? 46, 47, and 48. II. On the six episcopal cases, and especially on the absolution of the censure for striking a cleric.—49. III. On dispensation with illegitimate persons.—50. With bigamists.—51. IV. Concerning irregularities due to a hidden fault; and what if the homicide is completely hidden.—52. Concerning accidental homicide.—53. V. Concerning incapacities.—54. VI. On the powers of bishops concerning marriages.—55. On dispensation concerning publications, vows of chastity, and impediments to marriage, remissive. Concerning doubtful impediments.—56. Concerning certain impediments, if a marriage has been contracted.—57. If a marriage has not been contracted.—58. Whether a bishop can delegate this power.—59. VII. On dispensation concerning intervals (of marriage).—60. VIII. On dispensation for a chaplain, so that he may be able to celebrate Mass in another church.—61. IX. On celebrating Mass after midday.—62. X. On oratories.—63. In which places can a bishop celebrate Mass?—65. Whether he can dispense to celebrate Mass at home.—65. XI. On the power of bishops and prelates concerning the election of their own confessar.—66. XII. Concerning the enclosure of nuns.—67. On the approval of confessars of nuns.—68. XIII. Whether they can change last wills.—69. XIV. On composition in restitu- (1) Salm. n. ps. —(a) Salm. tr. x8. c. 3. n. 120. —(3) Ibid. n. x25. —(4) Ibid. n. x27. —(5) Ibid. n. x28.

[*Latin ed. p. 639*]

OF THE PRIVILEGES OF BISHOPS. 627 concerning uncertain matters.—70. XV. Concerning the reduction of Masses.—71. Regarding oaths and vows (see treatise 5, nos. 19 and 42). Concerning the union of benefices, the

erection of new parishes, etc. 29. — BISHOPS, by virtue of the 25th session of the Council of Trent, chapter 5, are granted the following powers: "It is permitted to bishops to dispense in all irregularities and suspensions, except those arising from concealed sins, except for voluntary homicide, and except for those matters which are brought before a contentious court; and in all such cases of concealed sins, even those reserved to the Apostolic See, they may freely absolve, through themselves or a vicarious delegate specially appointed for this purpose, any of their subjects within their diocese, imposing a salutary penance. The same is permitted to them in the same forum of conscience, but only to themselves, and not to their vicars." Therefore, by virtue of the aforementioned canon, bishops can dispense in all irregularities and suspensions incurred by papal law due to concealed sins, except for voluntary homicide, and except for those matters which are brought before a contentious court. We said due to concealed sins; hence, as Bonaventure, Castellanus, and others rightly state, a bishop cannot, by virtue of the aforementioned power, dispense in any concealed irregularity arising from a defect (1); unless it is doubtful, as Fagnanus and Tournely, along with Gibert and others, hold to be probable, citing chapter *Nuper, de sent.* concerning excommunication (2), according to what we said in treatise 2, no. 57. But furthermore, they can absolve their own subjects, either through themselves or through another priest specially appointed for this purpose, from concealed papal offenses; indeed, according to the Council, they could previously even absolve from heresy (through themselves, not through others); but see what is to be said in no. 38.

30. — Regarding this power of the Council, several matters worthy of note should be considered. It should be noted that, in those places where the Council of Trent is not accepted, bishops cannot exercise the aforementioned power of the canon, as the common opinion of the doctors indicates (3), as is fitting: for the power of the Council is not received by bishops unless that Council itself is accepted; and it would be highly incongruous for the Council to enjoy privileges while refusing to accept its obligations.

31. — It should be noted that, under the name of bishops, vicars capitulars also come under this provision when the see is vacant; however, this does not apply to vicars of bishops appointed by their general commission; for a vicarious can do what the bishop can by his ordinary power (as will be said in no. 47), but not what the bishop can by a delegated power, which is a power attached to the office, as will be said in nos. 34 and 47. Furthermore, this power requires an express delegation by the Council (4). Whether abbots and others who have episcopal jurisdiction are included is denied by Concinius, Barbatus, and others, along with Pereira. However, Fagnanus, Sanchez, Castellanus, Sayrus, Avila, Salmant, LaCroix, and others commonly assert that when a concession is made in law, it has the force of law, which extends to all cases in which the same principle applies; otherwise, they say, the subjects of such prelates would not know to whom

they should appeal (5).

32. — It should be noted that, under the name of subjects, even pilgrims are included.

(1) Lib. 7. n. 46g.

(2) Fagnanus, in 2 parts, 1. Decretal, c. *Veniens de Fil. Presbyt.*, nos. 7 and 8; Tournely, with others, *Tractatus de leg.*, c. 6, art. 2, and *de disp.* in *irregular.*, part 2, c. ult.

(3) Suarez, in 3 *D. Thomp.*, part. *de Censur.*, dist. 4, r. sect. 2, no. 6; Sanchez, *Decr.*, lib. 2, cap. 11, no. 3; Salmeron, *de Penit.*, *Tract.* 6, c. 15, no. 3, with Alter; Castellanus, *tom.* 1, *Tract.* 4, dist. 4, p. 3, 2 r., no. 2, with Barbatus and Gare.

(4) See Sanchez, *de Matrim.*, lib. 2, disp. 40, no. 13, and following.

(5) See our work, lib. 6, no. 5g3, and vol. 7, no. 79.

[*Latin ed. p. 640*]

TRACT. XX. ON PRIVILEGES. Bishops of a diocese can absolve from all reserved cases, even those concealed, as taught by Suarez, Sanchez, Bona, Navar, Barbatus, Trullensius, Bossuet, and others, because the Council of Trent grants to bishops the power to absolve only those who are subject to them. Nevertheless, these same authors state that those who submit themselves to the sacramental forum become subject to the bishop. Furthermore, Suarez cites a declaration of the Sacred Congregation which states that a penitent can indeed be absolved from these concealed cases by the bishop of the diocese; however, not by his own bishop, because the absolution mentioned by the Council requires the presence of the bishop. Therefore, the same declaration states that bishops cannot absolve from these cases outside of the sacrament. This contradicts what Salmeron and Bona, among others, assert. Indeed, Fagnanus reports that Gregory XIII also declared this. This pertains to the absolution of sins; regarding dispensations from impediments and suspensions due to a concealed offense, Gregory XIII declared that these could not be granted by bishops of the diocese, nor even by those who resided there exercising the office of judge or physician, as Fagnanus reports in the cited passage. Can a bishop grant a dispensation regarding an impediment to a subject who is absent in another diocese? Avila and others deny this, but Bona, Tournhem, Suarez, Barbatus, Sanchez, Salmeron, and others more commonly and plausibly affirm it, because a dispensation can also be granted to those who are absent, and jurisdiction can also be exercised outside of one's own territory. The words "in his diocese" in the aforementioned chapter should not be taken as an absolute limitation, because Salmeron and Tournhem argue that these words are sufficiently understood when a bishop grants a dispensation from outside his own diocese. Indeed, Suarez, Sanchez, La Croix, Holzmüller, Castrén, and Pignatelli argue that these words do not refer to the first part of the

dispensation concerning impediments, but only to the second part, which concerns the absolution of sins. Therefore, they conclude that a bishop can grant a dispensation even if both he and the subject remain outside of the bishop's own diocese.

33.—Note 4. By the term "concealed offense," it is not to be understood that which can be proven in court by two witnesses, as some believe, based on a declaration of the Sacred Congregation cited by Fagnanus, in which it is stated that it is not safe for the conscience of one who has been absolved or granted a dispensation in such a case. But, as the more common opinion holds, by the term "concealed offense" is meant any offense that can be concealed in some way, even if it can be proven in court. Therefore, Azorín, Sanchez, Tournhem, Bona, Castrén, Salmeron, and others state that an offense is not considered concealed when it is known to a majority of the town, or neighborhood, or college; provided that at least ten people are aware of it. And Cardinal Lambert, along with Tiberius, Navar, Siro, and others (speaking of concealed impediments to marriage, where the same rule applies), assert that an impediment is considered concealed if it is known to seven or eight people in a city, and to six people in a town. And Fagnanus, in the first part of the third Decretal, chapter Vestra, concerning the cohabitation of clerics, number 118, testifies that the Sacred Penitentiary considers as an impediment that which is known to only four or five people. Indeed, I am aware that the Sacred Penitentiary has granted a dispensation in a case where the impediment was known to approximately ten people.

Furthermore, as we stated above in tract 18, number 77, Fagnanus affirms that an offense or impediment is not considered concealed (1) Lib. 6. n. 595.—(2) In 2. part. primi Decretal. cap. Dilectus de temp. Ord. n. 36.,—(3) Lib. 7. n. 81.—(4) Lib. 6. n. 593 v. Hic autem.—(5) Notif. 87. n. 45. in fin.—(6) N. 2111.

[*Latin ed. p. 641*]

ON THE PRIVILEGES OF BISHOPS. 629 hidden, although known to two witnesses, when there is a clause in the granting of absolution or dispensation: provided that it is entirely hidden. 34. — Here, the following is doubted: 1. Whether a bishop can generally delegate this Tridentine faculty to other priests? Regarding dispensations from irregularities, it is sufficient (as Suar., Barb., Sanchez, and others say) that the bishop simply entrusts his faculty to others, without any special delegation; since the aforementioned faculty of dispensing today belongs to the bishop by virtue of ordinary power, as it is attached to the office of bishop, and not to the industry of the person. However, with regard to absolution from sins, some assert that a special delegation is required for each particular case, considering the words of the Tridentine Council, either by itself or by a vicarious person specifically delegated for that purpose. However, despite this, the most common opinion, and the more probable one, is that of Suar., Sanch., Barb.,

Navar., Laym., La-Croix, Salm., etc., who hold that a bishop can also generally delegate this faculty to a priest, provided that he expressly specifies it; for by specifying it, a special delegation is already considered to have been made, which, indeed, can then be general for all cases that may arise; for, as we have said, this faculty today belongs to bishops by ordinary right, as it is attached to the episcopal dignity (1). 35. — The following is doubted: 2. Whether a bishop can absolve, or delegate by virtue of the *caput Liceat*, the faculty of absolving even from reserved cases with censures imposed by other bishops when they are hidden? Bonac. and others argue that, because of the word "also" in the same chapter: "In all hidden cases, EVEN those reserved to the Apostolic See." Therefore, they say that the faculty granted to bishops to absolve even hidden censures imposed by other bishops upon themselves should be understood, so that the word "also" does not seem to be added in vain (2). But we deny this, because of two declarations of the Holy See, one of which is from November 19, 1712, and the other from January 24, 1711, found in the *Thesaurus resolutionum S. C.* (vol. 1, page 392); especially, by virtue of a certain declaration issued by Benedict XIV on August 21, 1752, which begins: "Pias Christi fidelium," in which it is said: "This... faculty of absolving, and besides in cases reserved only to Us and the Apostolic See, and not to ordinary local jurisdictions... And consequently, absolutions contrary to the present declaration of Ours may have been, or may be, granted, and We decree and declare that they cannot be valid" (3). 36. — The following is doubted: 3. Whether the faculty granted by the Tridentine Council is to be understood to apply even to cases and irregularities reserved after the Council? Garcia and Floronus, in Diana, deny this, and infer it from a declaration of Gregory XIII, in which, when it was doubted whether a bishop could absolve a nun who had broken her enclosure from excommunication (when it was reserved by St. Pius V), the Pope declared that he could not. However, the most common opinion, with Sanch., Bonac., Suarez, Bossio, Diana, Vega, and others, affirms this; in the *caput Liceat*, the faculty is granted indefinitely; and according to the general axiom, where the law does not distinguish, neither should we. The praised declaration does not contradict this, because in the bull of St. Pius V there was a clause from which, besides (1) Book 6, no. 594, Doubt 9. — (2) No. 594, Doubt 8. — (3) See in the chapter on the Synod, book 5, chapter 5, no. 9.

[*Latin ed. p. 642*]

630 TRACT. XX. ON PRIVILEGES. The Roman Pontiff, unless in the article of death, cannot grant absolution. Therefore, we do not doubt that, concerning *Diana Veteranorum*, when certain bulls contain a clause such as "unless in the article of death," it is understood that the bishops' faculty is removed (1). Thus, I had written before; but afterwards, after more mature consideration, I found that this was not universally approved. Therefore,

I present here both opinions on this point. It has been debated whether bishops can absolve from papal censures reserved to the Holy See, if the reservation contains the clause, "unless in the article of death," from which, except by the Roman Pontiff, one cannot be absolved unless in the article of death? Fagnanus denies this in chapter 15, "Dilectus," of the ordinary of the time, number 30 to 34, followed by Mattheucci in "Officium Curiae," chapter 11, number 21, Santarell in "De Haeresi," chapter 5, question 1, number 1, along with others. They say this based on a certain decree of the Holy Congregation, approved by Gregory XIII, concerning the bull of Pope Pius V, "Decori, etc.," where the excommunication for the violation of enclosure by a nun was reserved, with the aforementioned clause, "unless in the article of death," etc. However, Navar asserts this in volume 3, book 5, on sentences of excommunication, council 43, *Diana* part 7, treatise 2, on the power of bishops, resolution 20, Sanchez in the Decalogue, book 6, chapter 15, number 76, Suarez in "De Censuris," volume 5, dispute 41, section 2, number 8 and following, Bonac in "De Censuris," dispute 1, question 22, point 2, number 2, where he discusses the decree of Trent, and the treatise on enclosure, question 1, point 5, number 1, "Thesaurus de Pænis," 2nd part, practice, under the word "Enclosure," chapter 8, word "Absolve"; Tambur in "De Jure Abbatissarum," dispute 19, question 5, number 1, Pellizarius in "De Monialibus," chapter 5, section 2, number 28, Pignatelli, volume 10, consultation 100, number 25, Monacell in part 1, in the appendix, notes on constitution 8 of Pope Pius V, number 4, Felix Potestas, volume 1, part 4, number 3511, Roderic, volume 1, question 24, article 19, Toletus in "Summa," book 1, chapter 41, number 7, Vincentius Candidus, master of the sacred palace, volume 1, disputes 3, article 28, Donatus in "Praxis Rerum Regularium," volume 4, treatise 4, question 8, number 9, Lezana under the word "Enclosure," number 20, and many others, who say that if the case is hidden, the bishop can certainly absolve, or another who has the faculty to absolve, based on the aforementioned chapter "Liceat" 6, because it is not authentically certain that the decree cited by the Holy Congregation and the declaration of Gregory XIII exist; and because the authors cited in practice testify to the contrary being observed, while in reality bishops often absolve from such hidden excommunications. All of this I noted from the library of Father Ferraris, volume 5, under the word "Nuns," article 3, number 20, 37. — It is debated 4. Whether a bishop, by virtue of chapter "Liceat," can absolve from a papal censure which was incurred by confessors absolving their accomplices in a shameful sin, through a bull of His Holiness Pope Benedict XIV, "Sacramentum." On the one hand, it seems that he cannot, because if this case is inherently hidden, if bishops could absolve from it, the papal reservation would be rendered useless; and we have already said in number 17 that every privilege is tacitly revoked when otherwise a law issued after the granting of the privilege cannot have its effect. On the other hand, one could respond that, even with the bishop's

aforementioned faculty, the aforementioned reservation would not remain completely useless, because it can happen that the case sometimes becomes public; and because this reservation (1) Book 6, number 594.

[*Latin ed. p. 643*]

OF THE PRIVILEGES OF BISHOPS. 631, at least in Rome, it will always have effect, and in all other places where Trent is not accepted, and in which (as we said in number 30) the bishops cannot enjoy this privilege. 38.—It is doubted 5. whether the aforementioned faculty of Trent was taken away from the bishops by virtue of the Bull of Celestine with respect to hidden heresy, and with respect to other cases reserved therein? Some, including Navarrus, Concinius, and others, to whom Milanti, Concinius, and Salmasius do not object, say that the concession of Trent was not expressly revoked in the bull, as it ought to have been according to chapter. Some, in the Responsa, hold otherwise. But we, with the more common opinion, affirm it, and because of several declarations of the Holy See, both by virtue of the derogatory clause, "unless in the article of death," which is already read in the bull, as we said in the preceding number 36; and by virtue of another clause which prohibits them from absolving those who have incurred the irregularity due to said hidden heresy, under the pretext of any indulgences granted by us, or by any decree of a council. On this matter, several declarations are cited from Fagnanus and Cardinal Lambert (1), as well as from Pius V and Gregory XIII. Furthermore, the proposition 3, which stated that the prior opinion had been seen and tolerated by the Holy See, was condemned by Alexander VII. As rightly say Viva, Holzmüller, Elbel, and the esteemed Cardinal Lambert (2), this condemnation certainly makes the contrary opinion improbable; for since the Pope declared that it had never been tolerated, he implicitly declared that it was not to be tolerated; hence Lambert concludes that no one can today, without a sign of temerity, maintain the contrary. 39.—However, it must be noted here that although a bishop cannot absolve from hidden heresy in the internal forum, he can nevertheless, as an apostolic delegate, dispense from the irregularity incurred due to said hidden heresy, as Salmasius and Felix Potestade (3) say. Furthermore, a bishop can also absolve a notorious heretic in the external forum, as an apostolic delegate, after a prior abjuration has been made before a notary and witnesses, and after the offending bishop has been absolved, he himself can then be absolved from the sin of heresy by any confessor; so affirm the common doctors (4). 40.—It is doubted 6. whether a bishop can absolve from heresy, and from other cases reserved by the Bull of Celestine, those who are prevented from going to Rome? Some absolutely deny it; others deny it only in the case of heresy. But we affirm, with the common opinion of theologians and canonists, which is held by Lugat, Layman, Concinius, Roncaglia, Castiglioni, Milanti, Salmasius, Concinius, Avila, Potestade, Viva, Pellizzari, etc., that, when there

is an impediment, the ordinary power of the bishops over these cases is restored, which they previously had by virtue of canons 23, 29, and 58 of the Decrees, concerning excommunications, where, although the words refer only to censure imposed by a cleric, the common doctors extend it to all other censures, and especially to those in canon Eos qui, in the same title, where the words generally refer to any censure, either of a canon or of a man, and it is said that, if those who ought to be absolved by him to whom they are subject cannot have recourse to another, because of the impediment, they are absolved by another (6). 41.—And it must be noted here 1. that in such a case of impediment, the bishops can not only absolve from heresy through themselves, but also through others, in general, as delegates. Nor does the Tridentine Council object, in which it is said that to them (1) De Synodo, book 7, chapter 32. — (2) Ibid. — (3) Book 7, number 76. — (4) Roncaglia, tractate 4, question 1, chapter 6, question 4, page 81, with Farinaccius and Castiglioni, de Fide, tractate 4, disputation 4, page 3, 2, number 1, and so Sanchius, Navarrus, Bannex, Gutti, Comitius, Vivaldus, etc., from the Bull, Camera, as published by Clement VII in the year 1550. — (5) Book 7, number 84.

[*Latin ed. p. 644*]

632 TRACT. XX. ON PRIVILEGES. Only vicars are permitted to grant absolution, not others, because in that case, the bishop does not grant absolution by virtue of the council, but by common law, according to which bishops are ordinarily empowered to grant absolution and delegation in other cases (1). Note 2. that among those who are impeded, there are the elderly, women, the infirm, the young, the poor, and those who have some enmity, and all others "who have other just excuses," by which they are reasonably excused from the journey," as stated in chapter De cætero, from the decrees on excommunication, and in chapter Ea noscitur, etc. However, in the same title, it should be noted that if the impediment is temporary and noticeable (lasting, for example, for six or seven months), then those who are impeded can be properly absolved; but they, except for women and children, must take an oath to appear before the Apostolic See, at least through a procurator, once the impediment ceases, so that they may be directly absolved by it; and if they do not appear, they fall back into the same censure, as stated in chapter Eos qui, from the decrees on excommunication, in 6. This applies even if they have been reconciled and have made amends to those offended (2). 43. If, however, the impediment is permanent (that is, it will last for ten years, or at least five, as Ronc. Viva and Tamb. say), those who are absolved remain entirely free from the obligation to appear. But generally speaking, those who are permanently impeded are: 1. members of a family; 2. religious, even if they incur a censure before entering; 3. the elderly, seventy years of age; 4. servants; 5. the poor; 6. those condemned to the galleys or prisons; 7. those infirm with a serious and prolonged illness,

such as quartan fever and the like; 8. those who are obligated to support or administer the affairs of a family; 9. all women, even if they are not nuns (except for the excommunication incurred by nuns for breaking their enclosure, even if it is hidden, which is always reserved to the Pope, as we said in number 36, according to the declaration of Gregory XIII); 10. the young, even if they ask to be absolved after puberty; 11. those who live in a place from which they cannot leave, such as soldiers, seminarians. And finally, all others who cannot go to Rome without serious spiritual or temporal harm (3). 44. Note 3. that, according to the more probable and common opinion of Cast. Avilæ, Coninch. Milant. Rone. Salm. Viva, Spor. Dicast. and others (contrary to Bonac. and Potestatem), it is not the case that they must recur to Rome through a procurator or by letter; because, as long as the impediment exists (as we said in number 40), the ordinary power of the bishops to grant absolution is restored, which had been taken away from them by the pontifical reservation. All the more so because the law obliges only for a personal recourse: therefore, whoever is personally impeded from going to Rome is absolved from all other obligations (4). 45. Note 4. that, when a penitent cannot appear before the Pope, he is necessarily obligated to have recourse to the bishop to be absolved from the papal censure, as stated in c. De cætero, 1, and c. Ea noscitur, from the decrees on excommunication. (What should be said in articulo mortis, see tract. 16, n. 97.) But when even the penitent cannot appear before the bishop (even outside the danger of death), it is very probable, with Soto, Navar. Suar. Castr. Laym. Ronc. Salmant. La-Croix, etc., that he can be absolved by any simple confessor (with the obligation, however, to appear before the bishop once the impediment ceases), as is deduced from the text in chapter Nuper, (1) Lib. 7, n. 90. — (2) N. 85 to 87. — (3) N. 88. — (4) N. 89.

[*Latin ed. p. 645*]

ON THE PRIVILEGES OF BISHOPS. 633 ibid. title (1). And we say that a penitent, presumably, as the Doctors Castres, Gerson, St. Antoninus, Lugat, Salas, etc., assert, is not bound to confess reserved sins, unless he is recidivous in them, or unless there is a proximate occasion for them, so that it is necessary to manifest them, so that the confessor may properly judge his disposition. See what we said in treatise 15, nos. 27 and 28, and in treatise 16, no. 133, end (2). And when the penitent is at the point of death, he can also be absolved by any confessor, even in the presence of the bishop, from papal censures; for in death (as we said), all reservations cease. See what we said in treatise 16, nos. 96 and 97. We say from papal censures; but not from reserved censures with a penalty imposed by the bishop; for the confessor must also instruct the dying man to present himself to his superior, if he recovers, so that he may receive from the same both the admonition that is fitting and the penance for the reserved censures, even though they are absolved, according to common opinion; and how can he

be absolved from this when the superior is present (3)? But let us pass on to the other privileges and faculties with which bishops are endowed. 46.—II. There are certain excommunications in law, the absolution of which is reserved only to bishops. These are: 1. against those who strike a cleric, or a monk, or any other person holding the privilege of canon law; 2. against those who procure an abortion of a living fetus; 3. against those who are absolved by the bishop from a censure reserved to him at the point of death, and who, after recovering their health, do not present themselves to him; 4. against minor brethren who admit brethren of the third order to divine services in their churches; 5. against those who communicate in the same offense as those who are excommunicated by the bishop; 6. Finally, all excommunications which the bishop reserves to himself are reserved (4). It should be noted here that there are certain special considerations regarding the absolution of excommunication for striking a cleric. First of all, a light (or moderate) striking must be distinguished from a grave striking. To incur excommunication, a mortal sin is always required. A light striking, as we have from the decree Perlectis, which Navar is quoted extensively (5), is when there is a simple striking made with the hand, foot, stick, and the like. A grave striking is when a tooth is knocked out, a notable amount of hair is pulled out, or when there is a striking that leaves a mark, or a bruise on the flesh, or when there is an effusion of blood caused by fists or nails. A very grave striking is when a limb is mutilated, or a large wound is inflicted, or a wound is inflicted with an instrument, or there is a large effusion of blood, or when a very great injury is inflicted. Therefore, a wound that begins as light can become grave, or very grave, by reason of the dignity of the person offended, or by scandal, as when a religious person strikes a cleric, or by reason of a sacred place, or a public place; or by reason of the time, as, for example, during the performance of sacred functions; or finally, if the injury itself is inherently very grave (6). 47.—Given these premises, it is stated in the decree Perlectis, cited above, that if excommunication is incurred for a light striking, it can be absolved by the bishop: indeed, even by his vicar; for this faculty belongs to the bishop by ordinary right, as Sanchez, Bonacich, Molina, and others say; and according to the general rule (as we said in no. 31), whatever the bishop can do (t) Lib. 7. n. 92.—(a) Lib. 6. n. 265. Quest. II.—(3) Lib. 7. n. 92.—(4) N. 213.—(5) Manual. cap. 27. n. 92.—(6) Lib. 7. N. 277 et 278.

[*Latin ed. p. 646*]

TRACTATE XX. ON PRIVILEGES. The vicar, exercising jurisdiction not delegated but ordinary, can do the same as the bishop, since they constitute one and the same tribunal, as Fagnanus, Sanch, and others attest (1). The excommunication can also be probably absolved by those who possess jurisdiction quasi-episcopal, and who come under the name of a bishop, as we said in number 31. However, if the assault was public,

the excommunication can only be absolved by the Pope, or his legate (it can also be appealed to the Holy Penitentiary, as we noted in treatise 19, number 148, ad I), but not by the bishop, unless it was concealed, or if those who committed the assault were minors, or women, as stated in chapter "Of Boys" and chapter "Of Women," concerning the sentence of excommunication, or if they were prevented from going to Rome, according to what we said in number 40. Those who are living collegially can be absolved by the bishop; if the assault was serious, but not enormous, as stated in chapter "Because," concerning the life and honor of clerics (2).

48. — It should be noted here: 1. That in a doubt as to whether the assault was light or serious, it is judged to be serious, as we have from the aforementioned "Extravagantes de Perlectis," in which it is said: "Rather, let the assault be considered serious, and let it not be absolved." 2. That, according to the more common and probable opinion, if someone gives poison to a cleric, then the censure is incurred when the poison begins to cause harm, because at that time violence is present. And conversely, before it causes harm, there is no effective violence, but only an action apt to cause violence; thus, Bonaventure, "De Veritate," question 4, article 2, "Diana Veteranorum," etc. (3).

49. — III. Regarding non-hidden irregularities, the bishop, according to chapter 1 and chapter 2 "Of the Sons of Priests," can grant dispensations to illegitimate individuals only to receive the minor orders, and simple benefices, and canonries in collegiates, as well as non-integral portions in cathedral churches, or other benefices to which the priesthood is not attached: but not to curacies, as stated in chapter "Those," in the same title. All agree on this. However, it is doubted 1. Whether the bishop can grant a dispensation for a canonry in a cathedral church? And indeed, with the more probable opinion, and the common opinion of Bossius, Castilian, Barbatus, Concilii Salmanticensis, etc. (against Pontanus and Tournhem, with Gibert), we say that he cannot; for although a canonry in itself is a simple benefice, nevertheless, by virtue of the Council of Trent, session 24, canon 12, it is attached to the sacred order; hence, today it requires the sacred order by its very nature (4). It is doubted 2. Whether the bishop can generally grant a dispensation in such irregularities with secretly illegitimate individuals? Diana, Avila, Barbosa, etc., admit this, saying that the Council of Trent already allows bishops to grant dispensations in irregularities arising from a secretly committed offense. But we deny this, along with Suarez, Layman, Bonaventure, Castilian, Tournemine, and others: and even Diana, with respect to this, retracted himself, because such an irregularity does not arise from an offense, but from a defect; and even if it arose from an offense, chapter "It is Permissible" refers to a proper offense, not an alien one (5). It is doubted 3. Whether the bishop is able to grant a dispensation with a secretly illegitimate individual, at least to administer the sacraments in the higher orders already received. Layman, Castilian, and Diana affirm this,

not only if the individual received the orders in good faith, but also in bad faith: and they infer this from chapter "Unless," § "Persons," of "Renunciations," where it is said that the bishop can grant a dispensation to a secretly illegitimate individual who has been ordained culpably. But this must be absolutely denied, along with Suarez, Fillon, Concilii Salmanticensis, etc., for the reasons stated above, that the bishop cannot (1) Book 7, number 279. — (2) Ibid. — (3) Number 280. — (4) Numbers 428 and 429. — (5) Number 450.

[*Latin ed. p. 647*]

ON THE PRIVILEGES OF BISHOPS. 635. To dispense concerning the major orders. The cited text does not impede this; for it is understood that the Pope alone can dispense. There, the discourse concerns a certain bishop who was improperly ordained (1). 50. Navarrus, Sanchez, Concina, and others, along with D. Thomas, assert that a bishop can also dispense for a bigamist to receive the major orders and simple benefices. But we deny this, along with Suarez, Layman, Castrop, Tournely, Barbosa, Bonac, etc., by virtue of a certain declaration of Sixtus V, in which the Pope declared that a certain bishop was suspended because he had conferred a benefice upon a bigamist, and added that the ordination had incurred penalties, as if it were improperly conferred (2). If, however, the bigamy is concubinage, although it is public, the common opinion, along with Tollet, Suarez, Castrop, Sanchez, Salmant, Tournely, and many others, is that a bishop can dispense even with regard to the reception of the major orders, and this is proven from chapter 4 of *De Clericis Conjugalibus* and chapter 1, *Qui Cleric vel Vov.* It is generally excepted if the cleric has a widow or another non-virgin as his wife, or if he has another wife before ordination (3). 51. IV. As we said from the beginning, a bishop can dispense in irregularities incurred due to a hidden crime, except for voluntary homicide. Some doctors say that, even with these exceptions, if the homicide were so hidden that it could not in any way be proven in court, then a bishop could dispense. But this opinion was rightly rejected by Salm, by Roncaglia, etc., because, on the one hand, bishops have no power over irregularities except for what was granted to them by Trent in the same chapter. It is expressly excepted there, voluntary homicide that is hidden. But if, by the term "hidden," is meant something contrary to the will, which can be proven in court, although it has not yet been proven, this is entirely gratuitously asserted (4). And so declared the Sacred Congregation on May 21, 1718. In that case, the question was whether a bishop could dispense in a certain homicide committed by a boy who, while playing with another boy, wounded him with a small sword, and who died forty days later from the same wound; namely, because the crime had been hidden for a period of eighteen years, and because it was morally impossible to bring it before the forum. The Sacred Congregation responded: "No." In the *Thesaurus*, the Sacred Congregation declares on

page 85. Furthermore, the common opinion is that a bishop can dispense when there is a danger to the soul, or another very serious reason, and it would be difficult to have recourse to the Pope (5). Moreover, Suarez, Castrop, Bonac, Salm, and others commonly assert that a bishop can dispense in an irregularity caused by a hidden mutilation (6). Furthermore, it is the common opinion of Navarrus, Layman, Sylv., Barbosa, etc., that a bishop can dispense in an irregularity due to accidental homicide, not only if it is hidden, but also if it is notorious, to receive the minor orders and simple benefices; for this, bishops could already do in ancient times, as many doctors testify, and Trent excepted only voluntary homicide, not accidental homicide, even if it is public (7). 52. Accidental homicide, that is, if someone, intending only to strike, kills through negligence, or if a surgeon kills through negligence (1) *Lib. 7. n. 431.*—(2) *Apud Fagnan. in c. Quoniam de const. n. 32.*—(3) *Lib. 7. n. 452.*—(4) *N. 392.*—(5) *N. 591.*—(6) *N. 581.*—(7) *N. 593.*

[*Latin ed. p. 648*]

636 TRACTATE XX. ON PRIVILEGES. Let it be a cause of death, and similar matters. It is doubted whether a homicide committed in a brawl should be considered a casual homicide? Many affirm, as Diana, Salmantine, and others; but we deny this, following the common opinion of Suar, Navar, Conc, Spor, and others, as does Diana himself who retracts; for he who commits homicide in a brawl, already kills voluntarily (1). See what we said in tractate 19, no. 108. Nevertheless, it is very probable, and the most common opinion is that the bishop can grant a dispensation to one who kills in self-defense, but who exceeds to some degree in that defense; for such a homicide cannot be said to be absolutely voluntary. 53.—V. Regarding disabilities imposed by the pontiffs as a penalty, it is doubted whether the bishop can grant a dispensation: such as, for example, the disability to receive benefices; imposed by Sixtus V in his bull, *Effrenatum*, concerning procurators of abortion; and the disability to celebrate Mass, imposed by Benedict XIV to confessors who solicit abortions, in his bull *In generali Congregatione*. Anacletus denies, and Roncaglione doubts, speaking of abortion; but Elbel and Spor admit it absolutely, because of the rule commonly received (as they say) from Scotus, St. Bonaventure, and others, that dispensations from all penalties imposed by common law and not specially reserved to the pontiff are understood to be granted to bishops, as is gathered from chapter *Nuper*, 29, of the *Sentences*, exception. See what we said in tractate 2, on the Law, no. 58 (2). 54.—VI. Regarding the matter of marriage, the bishop has various faculties to grant dispensations. He can grant dispensations in publications, but this has already been said in tractate 18 (when the subject was marriage), no. 58. Furthermore, he can grant dispensations in a vow of chastity emitted by the spouses; concerning which, enough has already been said there, no. 54. What remains to be

seen is whether bishops have any faculty regarding impediments that are impediments. 55.—In impediments that are impediments, only the pontiff can grant a dispensation. If the impediment is doubtful, the most common opinion is that the bishop can also grant a dispensation; so say Sa. Merbes, Tournely, Diana, Pichler, etc.; and although Sanchinez denies this in his tractate on Marriage (3), he seems to have retracted in his *decatalogus* (4): there he says, as if from a general rule, "Since the reservation of a dispensation is odious, it must be restricted to certain cases; doubtful cases are not included," under the reservation, as he asserts he has previously demonstrated, book 1, chapter 10, no. 74 (5). 56.—Conversely, when the impediment is certain, and marriage has already been contracted, the common opinion is that the bishop can grant a dispensation whenever it is not easily possible to obtain recourse to the pontiff, and whenever there is a danger of scandal, or infamy if the spouses are separated, or incontinence if they are not separated: so say Sanchinez, Castrop, Conc, Merbes, Tournely, Cabass, Nat, and others, following Alex, Bonac, Barb, Salmantine, etc., against a few (6). But La-Croix and Felix Potestas note here that if a dispensation can conveniently be obtained from the Sacred Penitentiary, and the spouses are in good faith, then it should be awaited, and in the meantime the betrothed should be left in their good faith, according to what we said in tractate 16, no. 113. Furthermore, it should be noted, with Pont, Castrop, Barb, Escob, Sanchinez, Salmantine, and others, that the bishop cannot grant a dispensation if both spouses have acted in bad faith; then, if da- (1) Book 7, no. 594. — (2) See book 1, appendix II, no. LIII, and book 6, no. 705, at the end, and book 7, no. 355. — (3) Sanchinez, book 8, D. 6, no. 18. — (4) Book 4, chapter 40, page 26. — (5) See our work, book 6, no. 902, see also. — (6) No. 1125.

[*Latin ed. p. 649*]

OF THE PRIVILEGES OF BISHOPS. 637. This place refers to a dispensation, granting the possibility of celebrating marriages daily without any expectation of a dispensation. Furthermore, the Council of Trent, Session 24, Chapter 5, states that anyone who knowingly enters into a marriage in a prohibited degree should be entirely deprived of any hope of a dispensation. However, it should be noted, as stated by Sanchez, Salm, Bann, the Council of Aversa, etc., that in order to establish bad faith in this case, it must be the case that the contracting party not only knowingly commits the act, that is, enters into the marriage knowingly, but also that they are aware of the impediment; indeed, that they have true knowledge of it; for the Council states: "He must have presumed knowingly." Therefore, in cases of gross ignorance, a dispensation may indeed be granted. However, a dispensation must be denied to someone who entered into the marriage, but omitted the necessary publications out of malice, as stated in the same Council, in the aforementioned passage (1). 57. If the marriage has not yet

been contracted, there is also a very probable opinion, and it is the common opinion, that the bishop can then grant a dispensation from a diriment impediment, when there is a danger of infamy, and recourse to the Pope is not easy; thus, Suar., Pignatel, Pont., Conc., Cabass., Castrop., Salm., Bonac., Cardinal Silvius, La-Croix, Viva, etc., along with Benedict XIV (2), against the very strict Fagnan, who denies this even at the point of death and in the necessity of legitimizing a child. But others commonly say that in such a case, either the Pope will delegate his power to dispense to the bishop, or that in a case of such necessity, the reservation of dispensation ceases, and the bishop can then dispense by his ordinary authority (3). Indeed, Pignatel asserts and proves (4) that in such a case, not only the reservation, but also the law of the impediment ceases, since it has now become harmful; for it is certainly true that a harmful law does not obligate, as all teach, along with St. Thomas. And from this, Roncagl. and the Instructor nov. Confes. (as we have already said, treatise 16, number 114) infer that, if the case arises in which the betrothed have already entered the church, and one of them reveals to the confessor an impediment that has already been secretly contracted, and the marriage cannot be postponed without scandal or infamy, then the confessor can declare in that case that the law of the impediment is not binding, and that the marriage can be entered into lawfully. However, for greater caution, they advise that a dispensation be obtained from the Sacred Penitentiary (5). But it should be noted that this applies when the bishop is absent; when this is the case, it is necessary to appeal to him, so that he may grant the dispensation, as we have said in number 45. Samb. and Gibert, however, say that if the contracting parties are from different dioceses, each betrothed must obtain a dispensation from his own bishop. But Honoratus Tourn. and others probably deny this, because, once the impediment of his subject has been removed by the bishop, this very act makes him capable of entering into marriage with another who is impeded; just as he who has the power to dispense in a certain degree, by dispensing with one of the betrothed, also dispenses with the other (6). 58. It is asked whether the bishop can delegate this power to dispense from diriment impediments to others in the cases described above? Some few deny it; but commonly, Castr., Bonac., Barbos., Sylvest., Sanchez, Pont., Conc., Salmantic., Escob., etc., affirm it. And he can delegate it not only in a particular case, but also generally for all (1).

(1) Lib. 6. n. 1124.

(2) De Synodo lib. 9. c. 2. n. 2.

(3) See lib. 6. n. 1122. and more fully in the same book n. 613.

(4) Tom. 8. consult. 33. p. 6.

(5) Lib. 6. n. 613.

(6) N. 1142.

[*Latin ed. p. 650*]

638. TRACTATE XX. ON PRIVILEGES. Concerning cases where dispensation may be granted, as Sanchez, Castrop, Salmantic, Bonac, Elbel, Valentia, Vasquez, Salas, Henriq, Coninch, Guttier, and others state. For since this power is not attached to personal industry, but to the episcopal office, it is already considered ordinary, and therefore can rightly be delegated, as we noted in number 34. And the same should be said concerning all other faculties which bishops possess regarding publications and impediments. However, it must be noted that vicars do not possess the power to grant dispensations without the special commission of the bishop; for we said in number 31 that in a general vicariate, the power to grant dispensations in such cases, which bishops possess, is not conferred, due to the presumed will of the Pontiff (1). 59. — VII. The bishop can grant dispensation concerning the intervals prescribed by the Council of Trent with regard to the ordination of clerics. And I. with regard to the minor orders, the Council remits the granting of such dispensation to the prudence of the bishop, saying: "The minor orders... may be conferred within intervals of time, unless it appears more expedient to the bishop" (Session 23, chapter 11). Therefore, even among the minor orders (speaking in general terms), some time should intervene, either from one general ordination to another, as some assert, or from one feast day to another, as others affirm. However, in order to grant dispensation in such intervals, any sufficient reason suffices, as many doctors teach. Between the first tonsure and the minor orders, no interval is required, because the first tonsure is not, strictly speaking, an order. II. With regard to the subdiaconate, the Council requires an interval of one year from the reception of the minor orders; but it adds: "Unless necessity, or the benefit of the Church, requires otherwise, according to the judgment of the bishop" (cited, chapter 11). By "the Church," it is understood the church to which the cleric is attached, as is clear from chapter 11. III. From the subdiaconate to the diaconate, a year is also required; but in this case, the bishop can grant dispensation for any reasonable cause; for the Council says: "Unless otherwise appears to the bishop" (Session 23, chapter 13). IV. Finally, from the diaconate to the priesthood, a year is also required, but more strictly: for the Council requires not only the benefit of the Church, but also necessity, saying: "At least a full year, unless, for the benefit and necessity of the Church, otherwise appears to the bishop" (ibid., chapter 14). (2). 60. — VIII. The bishop can also grant dispensation to celebrate in another altar, or in a church not designated by the founder, when there is a just cause, such as if this would be for the benefit of the same church; or if a chaplain is detained by illness, or is engaged in studies, or other affairs; or if he cannot readily attend the designated church, or for similar reasonable causes; thus, generally, state Castr, Conc, La-Croix,

Salmant, Barb, Ronc, Passer, Henr, Tamb, Mazz, and others; for then the bishop rightly interprets the will of the founder. However, La-Croix, with Pasq, rightly makes an exception if the founder designated the church and a specific time for the convenience of a particular family, or people, or for the worship of a particular saint: on the contrary, de Lugo and Tourn say that if the founder had no such intention, or if that purpose has ceased, a priest celebrating elsewhere commits only a venial sin, and is even excused from all guilt if he celebrates in a privileged altar; because then it redounds to a greater benefit of the same founder (3). (1) Book 8, number 638, and footnote number 1185. — (2) Number 798. — (3) Number 389.

[*Latin ed. p. 651*]

OF THE PRIVILEGES OF BISHOPS. 639 61.—IX. Furthermore, a bishop can, for just reasons, grant a dispensation, either to himself or to others, to celebrate the Mass after midday, as Lugo, Wigand, Navar, Castrén, and Salmander state (1). 62.—X. Formerly, according to canon 11 of the Missal, Dist. 1, concerning Consecration, bishops could also celebrate, either by themselves or through other priests, in any place, even in private homes. But later, in the 22nd session of the Council of Trent, in the decree concerning the celebration of the Mass, etc., it was forbidden for bishops to grant permission to celebrate in places other than in oratories that they themselves had blessed and which were intended for sacred purposes, which are considered as public; therefore, the Mass can be celebrated daily therein. Such oratories should have an entrance to a public road; but this is not to be understood of those that are erected in the houses of religious orders, or of any community, such as in seminaries, conservatories, hospitals, or prisons, which do not require an entrance to the public road; and it is permissible to celebrate on solemn days, as the Sacred Congregation has declared. The same applies to oratories that a bishop has in his own homes, even country houses, outside his own diocese (2). 63.—Furthermore, formerly, according to chapter 6, concerning Privileges, if a bishop was absent from his diocese, he could celebrate, either by himself or through others, in any house outside his own dwelling. But Clement XI took away this faculty from them; however, Innocent XIII restored it with his Apostolic Constitution, dated May 3, 1723, in which he stated that the prohibition was not to be understood of houses in which bishops were staying "on the occasion of a visitation, or a journey, nor even" when bishops, being absent due to just reasons, are staying in a foreign house. And this was confirmed by another bull of Benedict XIII. But since this privilege is personal to the bishop, Tamburini observes that other priests, in the absence of the bishop, cannot celebrate in these houses (3). 64.—It is doubtful whether a bishop can ever grant a dispensation for the Mass to be celebrated in private homes? By ordinary law, it has never been, nor is it now, permitted to celebrate except in sacred places, according to canon 11, Dist. 1, concerning Consecration.

However, the first exception is in cases of necessity, as stated in the same text. These cases of necessity are: I, if churches are destroyed, as stated in chapter Concedimus, Dist. 1, concerning Consecration II. II, if a priest travels for a long time through desolate places, or among infidels, as in the same chapter Concedimus III. III, when the church cannot accommodate the people. IV, in camps, and on the seashore, if otherwise, many would have to go without the Holy Sacrifice. Thus, generally, the Doctors cited by Cardinal Petavius and by Salmander (4). And in these cases, any priest can celebrate at an altar outside the church. Layman (5) observes, with Suarez and Soto, that if the bishop is not present, it is fitting to obtain permission from him. Furthermore, Castrén (6) observes that when a case of necessity is doubtful, the bishop can grant a dispensation, according to what is stated in tractate 2, no. 57. Furthermore, when a bishop grants a dispensation to celebrate outside the church in a particular case for a just reason, it is permissible; for although today bishops lack the faculty of granting this permission at their own discretion, as they formerly had, as appears from chapter Missarum, Dist. 1, concerning Consecration (1) Lib. 6, no. 344, at the end. — (2) No. 357. — (3) No. 358. — (4) Petavius, vol. IV, in Const. no. Urb. V, no. 31. Salmander, tr. 5, de Miss. Sac., chap. 4, from no. 50 and following. — (5) Layman, lib. 6, tr. 5, no. 8, no. 3. — (6) Castrén, vol. 21, de Sacr. Miss., D. s. p., p. 6, no. 2.

[*Latin ed. p. 652*]

640 TRACT. XX. ON PRIVILEGES. where it was permitted to be celebrated in places consecrated by the bishop, or where he himself permitted it. And from chapter "Hic ego," ibid., where it states: "In places where the bishop himself has ordered." And it was more clearly expressed in chapter "In his," 30, on Privileges, where Pope Honorius III decreed that the Brothers of the Franciscan and Dominican orders, by virtue of an apostolic privilege, could validly celebrate the Mass on a portable altar without the license of the local bishop; the reason being that otherwise the privilege would be useless, since they could validly celebrate outside the church only with the permission of the ordinary. But (the words of the Pope) this mentioned indulgence conferred nothing on them, without which it would be permissible, with the consent of the prelates. Therefore, it is rightly asserted by Father Suarez (1) with Sylvester, Soto, and Navarro, that formerly the bishops possessed the power to grant an indulgence to celebrate permanently in private dwellings and without any necessity: "Because," says Suarez, "this was not a dispensation, but the use of their own power." However, I say that this power has been taken away from the bishops by the Council of Trent, session 22, in the decree on the Observance of the Missal, where it is said: "Nor shall they [bishops] allow private houses, and indeed any oratory entirely dedicated to the divine service, to be designated and visited by the same ordinaries, and that this sacrifice be celebrated therein by secular or

regular persons of any kind." Nevertheless, the doctors generally agree that this is to be understood with regard to the license to celebrate permanently as a matter of habit, according to the power which they previously had: but it was not forbidden to them to grant this license temporarily as an act, if there is a just cause: thus says Father Suarez, loc. cit., at the end, after the case of necessity is excepted, "Also, because this power is given as a dispensation: but the Council did not take away from the bishop the power to reasonably dispense in such matters, especially when it is truly morally necessary." Finally, he adds: "Indeed, this practice confirms it, because it is done without any scruple." The same is said by Bonacina (2): "The bishop can, in some case, with a just cause concurring, dispense that the Mass be celebrated outside the church in a suitable place;" thus Reginald, Beja, and Cenedo. Then he refers to what was said elsewhere (3), where he wrote that the bishop can rightly dispense in canonical laws concerning matters which frequently occur, and which require a dispensation; or when a serious necessity or a serious advantage arises, and the Apostolic See cannot be easily reached. This is in accordance with what we said in tract. 2, n. 58. Barbosa (4) also writes: "The Council speaks of the common manner of celebrating, but it did not take away from the bishops the power to reasonably dispense, when there is a necessity or a just cause." Escobar (5) also writes: "But such a dispensation, with a reasonable cause, should not be reckoned among abuses; therefore, the bishop can grant this permission (to celebrate outside the sacred place) when a noble person, because of old age or infirmity, is unable to attend church, so that he may hear Mass and receive the Eucharist." Layman (6) also writes: "This power does not seem to have been taken away (from the bishops) in the case of necessity to dispense, either once, or frequently, as long as a reasonable cause suggests; it is permissible to celebrate the Mass on a sacred altar in a place suitable for profane uses." Holzmann (7) also writes: "Furthermore, the case is to be excepted when the bishop dispenses for a reasonable cause."

(1) Suarez, vol. 3, on 3rd of the Summa Theologica, part. Disputation LXXXI, section 5, verse 2.

(2) Bonacina, on the Eucharist, D. 4, q. ult., point 9, n. 11.

(3) Bonacina, on the Laws, D. i, q. 2, p. i, n. 17, v. 2nd and 3rd.

(4) Barbosa, on the Power of the Bishop, Alleg. 25, n. 9.

(5) Escobar, vol. 3, on the Eucharist, cap. 6, n. 85.

(6) Layman, l. 5, tr. 5, cap. 3, n. 4, v. 2nd.

(7) Holzmann, vol. 3, on the Eucharist, c. 2, n. 570, v. Excip. præt.

[*Latin ed. p. 653*]

OF THE PRIVILEGES OF BISHOPS. 641 "So that, in private dwellings, for example, for the sake of a sick person, it may be celebrated before a portable altar." Others also write this, such as Salm, Elbel, and La Croix (1),

with Concinius, Rodriguez, Pasqualig, Quarti, Diana, Marcantonio Hurtado, and Fagund. Therefore, the aforementioned statement can indeed be said to be commonly held. And it should be noted that, when the aforementioned doctors mention the necessity regarding this dispensation, they do not mean the necessity of celebrating [the Mass], for such a necessity does not require a dispensation, as we wrote above in the first exception noted; but rather, they mean the necessity of celebrating, or hearing, Mass outside of the church, when there is a just cause for celebrating. Nor does this contradict the decree of Clement XI, which P. Mazzotta objects to, nor does it contradict the decrees of Paul V and Urban VIII, by which the aforementioned dispensation is forbidden to bishops; because these are understood, as the decree of the Council of Trent is understood, where they say, according to Escobar and Salmanticensis, number 58, with Philibert, Hurtado, Navarret, Quintanad, Diana, and Fagund, that is, of a dispensation by way of habit, and not already by way of an act for a particular occasion, when there is a just cause for dispensing. And since, after the decree of the Council, there have been authors, such as Soto and Emmanuel Sa, who said that it is not a grave sin to celebrate outside the church, if it is done in a decent place; indeed, Soto wrote, as P. Suarez reports (2), that there is no sin in it, provided that the Mass is said privately, so that all scandal is avoided; therefore, I believe that the aforementioned pontiffs forbade bishops by decrees that were clearer and more urgent. Then, it is doubted how many times this dispensation can be granted. Salm says once, or twice; but others, such as Suarez, Layman, Bonacich, Escobar, Holzmüller, and Elbel with Pasqual, etc., speak indefinitely, and mean that it can be granted during that infirmity, or other accidental cause. And they speak indefinitely not without reason, since the prohibition of dispensing is understood, as we have shown above, to be made only with regard to permanent dispensations, and not to those that are granted for a time because of some transient cause, and it is certain that prohibitions, as being odious, must be strictly interpreted. Furthermore, there is a certain declaration which Gallemarte presents on this subject (3), where it is said: "The ordinary allows, at his own discretion, considering the necessity of persons, and the quality of the infirmity, that for the convenience of the sick, the faculty of celebrating may be granted even in a private oratory, or an altar specially designated." And the same Cardinal Petra (4) admits that it is permissible for a bishop to grant permission to celebrate at the home of a prominent sick person, so that he may hear Mass and receive Communion. Furthermore, Honorius III, in the aforementioned chapter, In these, 30, on Privileges, speaking of the faculty of celebrating, said that in this matter, a benign interpretation should be made. But if such a license can be granted by bishops to lay people who are sick, so that they do not lack Mass, as mentioned above; all the more can it be granted to priests who have some necessity to celebrate frequently, as is inferred from the Council of Trent, session 23, chapter 14,

on reforms, where it is said: "Let the bishop see to it that at least on Sundays and solemn feasts..." the Masses are celebrated. Therefore, I would not excuse a priest from venial sin who, being healthy, celebrates daily (except for) (1) Salm, de Sacrif. Missae, tract. 5, cap. 4, n. 56. Elbel, Theol. Moralis, ibid., title, page 156, n. 353. La Croix, 1, 6, p. 2, n. 263. (2) Suarez, in 5. p., vol. 3, dist. 8r, sect. 3, in princ. (3) Gallemarte, in Trid., session 22, Decree on observance, etc., p. 6. (4) Cardinal Petra, vol. 4, in Const. 2, Urban VIII, n. 82, 41.

[*Latin ed. p. 654*]

642 TRACT. XX. ON PRIVILEGES. A priest may omit celebrating the Holy Mass one day a week out of reverence, but he should not do so out of laziness; for the priest celebrates not only for himself, but also for the entire Church, of which he is constituted a minister, and for the entire Christian people, for whom he intercedes at the altar, as the Apostle declared: "For every high priest taken from among men is ordained for men in the things that appertain to God, that he may offer up gifts and sacrifices for sins:" Hebrews 5:1. Hence, as I said, there arises a certain necessity for the priest to celebrate; and therefore, bishops can more easily grant permission to priests to celebrate in their own houses, during their illness. 65.—XI. It is sufficient that what has been said on this point has been stated; let us proceed to other matters. In the chapter concerning Penance, at the end, and in Rheims, it is read that bishops residing outside their own diocese, and lesser prelates, namely abbots and superiors of monasteries, and also prelates of the Roman Curia, such as protonotaries, auditors of the rota, etc. (as Suarès, Lugo, Diana, etc., say), can choose a confessor, without the permission of the ordinary of that place. But the Holy Congregation declared (which was confirmed by Gregory XIII apud Fagnanus) that this must be understood to mean that they can choose any priest who is subject to them; or any priest who is not subject to them, but who has been approved by their own ordinary, that is, by the ordinary of the domicile of that priest, as Lugo explains (1). Cardinals also enjoy this privilege, but only in Rome, as Fagnanus says; and they can choose any priest as their confessor, both for themselves and for their family, whom they can even bring to Rome with them; which is also granted to bishops (2). 66.—XII. Bishops are delegates of the Apostolic See to safeguard the enclosure of monasteries of nuns, even those exempt, and those subject to rules, as we shall demonstrate in number 87. From this, de Alexandr. Bautrius, Clericatus, Pelliz. etc. (against Diana and Pasqual.) infer that bishops can indeed reserve cases concerning the enclosure for themselves, and so declared the Holy Congregation of the Council on November 16, 1720. This must also be understood with respect to the Jesuits, etc., whatever has been said in Tract. 19, n. 43. See below, n. 80. 67. All confessors of nuns, even those exempt, must be approved by the bishop, as Gregory XV prescribed in the Bull Inscrutabili, which

was confirmed in all respects by Clement X in another Bull Inscrutabili 7. Benedict XIII, and more recently by Clement XII, who in all respects renewed the Bull of Gregory (about which see below, n. 80.), even with regard to those things which Benedict XIII had granted contrary to the Bull of Gregory (3). And therefore, Tamb. also says that exempt monks incur cases reserved by the bishop; because, just as he can limit the time and persons, so also he can limit the cases. But others, more commonly and probably (Pilliz. Quint. and de Alexandr.), deny this, because exempt monks are outside the jurisdiction of the bishop, and the approval of a confessor only concerns his suitability; all the more so, because in the Bull Clement X Superna, it is said that the bishop can limit the time, place, and persons; and there is no mention of cases (4). But this does not apply to the enclosure, concerning which the bishop can indeed reserve both cases and censure for himself, as we said in Tract. 19, n. 43, and according to what (1) See lib. 6, n. 565; v. Dubitatur hie 2. — (2) Ibid. v. Dubit. 2. — (3) N. 677. — (4) N. 602. Quer. VI.

[*Latin ed. p. 655*]

ON THE PRIVILEGES OF BISHOPS. 643, we shall say number 80. Furthermore, it must be noted that, by the bull *Pastoralis* of Benedict XIV, a bishop can assign an extraordinary confessor to nuns who are exempt [from certain obligations], if the regular prelate would refuse to grant this, which prelate ought to be of another order, or secular; and this not only in the case of death, but also in life, each year (1). 68. — XIII. Several doctors, such as Angelus, Sylv. Arm. Tab., and others with Croix (who adhere to them), assert that, for a just cause, a bishop can alter the pious dispositions of testators, because they have the power to grant dispensations in the law which commands that the last wills be fulfilled, whenever a just cause is present; and they confirm this from the Council of Trent, session 22, canon 6. But we deny this with a more probable opinion, according to Mol, Laym, Sanchez, etc., because in chapter Tua, concerning Testaments, and in chapter 8 of the same session 22, the Council commands that bishops diligently fulfill the last wills. Nor does what they object and what is read in the same chapter 8, invalidate this, because there it is only stipulated that bishops examine the causes to see whether they are true or not, when the last wills are altered by the Apostolic See. All the more so, because in Clementine, *Quia contingit*, concerning religious houses, it is said that goods are to be applied to some use, and cannot be applied to another except by the Apostolic See. Furthermore, it is very probable that Laym, Bonac, Salm, Coninch, and Trull say that, whether some cause arises, or the testator is ignorant of some cause, which, if he had known, he would have disposed of otherwise; then the bishop can alter the disposition, but together with the heir; although, some doctors assert that this can be done even if the heir objects (2). 69. — XIV. The doctors, such as Viva, Diana, Trull, Busemb,

and others, also say that a composition can be made by a bishop for the restitution of uncertain goods (that is, those whose owner is uncertain) which are to be given to the poor; because, as they say, such a composition is not reserved to the bishops by any law, and is contrary to the presumed will of the creditors. But Lugo, Mol, Tur, Cord, and others more reasonably object, because the administration of such goods pertains only to the Pope, or to the prince (3). And in truth, Pope Benedict XIV, in the bull *Pastor bonus* (April 23, 1744), granted this faculty to the Holy Penitentiary (4). See treatise 19, number 148 to 10. 70. — XV. La-Croix, Tamb., and Pasq. also assert that a bishop can reduce the number of Masses left by a testator, whenever it is found that, due to the smallness of the alms, those who would celebrate the Masses cannot be found. But this is contrary to the decree of the Holy Council, and indeed reasonably so; for the decree of the Sacred Congregation, issued by the order of Urban VIII, and confirmed by Innocent XII, strictly prohibits bishops from reducing, moderating, or changing the obligations of Masses imposed at the foundation, and after Trent, appeals in this matter must be made entirely to the Apostolic See. Because it was rightly declared there that the faculty granted to bishops and others by the Council, session 25, canon 4, concerning reforms, is to be understood as a reduction of Masses left before the Council. Furthermore, Fagius says with Felice that if, from the beginning, the revenues were sufficient, and then they have been diminished in such a way that they are in no way sufficient, then it does not seem that the faculty which bishops have by common right to moderate Masses, according to chapter "Not indeed concerning Testaments," has been taken away (5). (1) Book 6, number 576. — (2) See more about this in book 5, number 93, question 11. — (3) Book 6, number 592, see note. — (4) Book 7, number 470, concerning the faculty of the Holy Penitentiary to — (5) See book 6, number 331, see doubt 1.

[*Latin ed. p. 656*]

644 TRACTATE XX. ON PRIVILEGES. 71. — As stated above, number 53, a bishop can, with probability, grant dispensations in all matters in which dispensation is not specially reserved to the Holy See. Concerning what bishops can do regarding the relaxation of oaths, and concerning the commutation or dispensation of vows, we have stated in treatise 5, numbers 19, 42, and following. It should be noted here that, according to the Council of Trent, session 21, chapter 7, a bishop can unite, or transfer to another church, simple benefices that have already been reduced to a mere title, or that are founded in a church that has fallen into ruin, to such an extent that it can no longer be repaired; see Barbosani (1). Furthermore, a bishop can unite simple benefices, even those reserved, or encumbered, or vacant in the Roman Curia, to seminaries; Council of Trent, session 23, chapter 18. Furthermore, during a visitation, a bishop can compel parishioners to provide what is necessary for the parish priest. Council of Trent, session

21, chapter 4. He can also erect new parishes, and endow them from the fruits of the tithe, if these are abundant, but without prejudice to the rights of the possessor; Council of Trent, ibid. Furthermore, he can unite two parishes, if the parishes, when divided, cannot support their own parish priest; provided that the people are not so far apart that the assistance of a single parish priest is not sufficient; ibid., chapter 5. CHAPTER IV. ON THE PRIVILEGES OF REGULAR CANONICS. PARAGRAPH I. ON PRIVILEGES PERTAINING TO ALL REGULAR CANONICS IN COMMON. 72, 73, 74. I. Concerning exemption from the jurisdiction of bishops. — 75. Exceptions to this, especially concerning the celebration of Masses. — 76. Declaration of the Holy See. — 77. In what cases can a bishop obligate regular canonics, etc. — 78. Whether regular canonics are bound by the precepts of bishops. — 79. Whether a bishop can visit them. — 80. Whether he can visit the cloister of nuns. — 81. Whether he can request an accounting of Masses celebrated, etc. — 82 and 83. In what cases can he proceed criminally, etc. — 84 to 87. II. Concerning the obligation of tithes. — 88. III. Concerning foundations. — 89. Concerning monasteries subject to the bishop. — 90. IV. Concerning the conservator judge. — 91 and 92. V. Concerning burial. — 93 and 94. Concerning the canonical portion, etc. 72. — I. REGULAR CANONICS possess the privilege of exemption from the jurisdiction of bishops; for the prelates of regular canonic foundations have in their churches and monasteries a jurisdiction almost episcopal, both with regard to persons and to places, as demonstrated by Salmant, who discusses all the aforementioned privileges more fully in this section; but we will only note here the more principal matters (2). 73. — Therefore, concerning this aforementioned exemption, it should be noted first that in cases of doubt regarding any privilege, the decision belongs to the Supreme Pontiff, as declared by Clement IV, and by other pontiffs (3). It should be noted secondly that regular canonics cannot relinquish this privilege of exemption, as is evident from chapter "Cum tempore, de arbitris," because to do so would be to the detriment of the religious order. Therefore, no custom to the contrary can prevail in this matter (4). 74. — It should be noted thirdly: that this privilege is enjoyed not only by those who have made profession and converts, but also by novices who come in a favorable condition under the name of religious; and also by tertiaries and beati, as stated in number 8. Servants of the regular canonics who actually minister, and who reside within the cloister of the monasteries, and who live under obedience, are also included, according to the Council of Trent, (1) Barb. Potest. episc. All. 66. ex 9. 15. — (2) Salm. tr. 18. c. 3. n. 5. — (3) Ibid. n. 6. — (4) Ibid. P.

[*Latin ed. p. 657*]

REGARDING THE PRIVILEGES OF REGULAR CANONS, Canon 645, Session 24, Chapter 11: Regular canons are exempt from the jurisdiction of bishops, both concerning censures (according to the bull of Alexander IV,

apud Salmant.), and also concerning the Paschal communion (1). It should be noted that apostates and fugitives can be apprehended by bishops; but only in order that they may be handed over to their superiors. The bishop alone can punish them in the case where their monasteries are located in a distant place, and they themselves, having been warned, refuse to return, according to the Council of Trent, Session 7, Chapter 14 (2). See other matters concerning this subject, numbers 82 and 83. It should be noted fifthly that secular individuals residing in monasteries, if they commit a crime there, do not incur the penalties imposed by the bishop (3). This is except if they violate the orders of the bishop concerning the celebration of Mass, as will be stated at the end of the following number, 75. - Sixthly, many things are noted here in which regular canons are not exempt from the jurisdiction of bishops. And firstly, without the permission of the bishop, regular canons cannot build monasteries, according to the bull of Urban VIII, dated August 28, 1624. And it should be noted that in the bull of Gregory XV, *Alias*, it is forbidden for bishops to grant this permission, if in the monastery there are not at least twelve religious persons, either by income or by alms; but this is not understood to apply to hospices, as Barbosa, Peyrinus, and others say. Secondly, regular canons cannot publish books without the permission of the bishop, as stated in the Council of Trent, Session 4, Decree on the Publication of Books (4). 3. The bishop can compel religious to return novices who are unwilling to make their profession, and to return all that they brought with them upon entering (5). 4. The dispositions to be made by a novice cannot be made before two months have passed since they professed, without the permission of the bishop, or vicar, according to the Council of Trent, Session 25, Chapter 16. 5. The bishop has the power to know, together with the superior, the reason for the nullity of a profession (6). 6. The bishop, or someone deputed by him, must inquire into the will of the virgins, when they enter, or profess in monasteries, according to Trent, Session 25, Chapter 17. But this must be done within fifteen days; otherwise, he cannot interfere further in this matter. 7. The bishop can prohibit the admission of more than the number of religious women who can be supported in monasteries, even those exempt, as was established in the bull of St. Pius V (7). 8. The bishop can compel monks who permanently reside outside the cloister of the monastery, because of debts contracted by them with poor people, such as orphans, widows, etc. (8). 9. The bishop can require religious to participate in processions, according to the Council of Trent, Session 25, Chapter 13, provided that he calls them not by a public edict, but by some personal messenger (9). 10. The bishop has jurisdiction over monasteries in which there are not at least 12 religious, as will be stated in number 88, at 3. Finally, the ordinances of the bishops concerning the celebration of Mass are excepted: for with regard to this, the Council of Trent, Session on the Observance in the Celebration, states that the bishops should act

as delegates of the Apostle, saying: "So that not only they themselves, but whatever other things may seem pertinent to this, they... as delegates of the Apostolic See, may prohibit, command, etc., and that these may be inviolably observed, subject to ecclesiastical censures and other penalties: Salm. tr. 18, chapter 3, number 8, and see our work, volume 9, appendix, chapter 4, on privileges, number 73. - (2) Salm., in the same number, 8. - (3) Salmant., ibid., number 9, and treatise, 10, chapter 3, numbers 10, 11, and 12. - (5) See Salm. tr. 15, Peyrin, Garzia, and many others. - (4) Salm. tr. 18, chapter 3, numbers 10, 11, and 12. - (6) See Salm. tr. 15, chapter 3, number 76. - (7) Ibid., chapter 5, number 15. - (8) Salm. tr. 18, chapter 3, number 14. - (9) Ibid., number 15. - (10) Ibid., numbers 16 and 17.

[*Latin ed. p. 658*]

646 TRACT. XX. ON PRIVILEGES. "Notwithstanding privileges, exemptions, and customs whatsoever." It is to be noted here what is found in response to the Most Holy See to the bishops, dated February 7, 1632 (lib. 14, decrees, p. 561, verso), where it was generally stated: "In those matters in which jurisdiction over the regulars is granted to the bishop by common law, by the Holy Council of Trent, and by apostolic constitutions, he can also compel them by ecclesiastical censures." And the same was decided on June 4, 1672 (lib. 27, decrees, p. 406). Therefore, as Benedict XIV rightly observes (1), bishops can compel all, even the regulars, to observe not only those things established by the Council, but also those established by themselves, with regard to the celebration of Masses. Therefore, it is fitting that the most eminent Cardinal Spinelli, when he was Archbishop of Naples, on January 5, 1743, ordered under penalty of suspension from divine offices, even the regulars, not to admit any visiting priest to celebrate in their churches without the permission of the ordinary.

76. Other things are noted which have been declared by the Holy See in the decree of July 2, 1520. 1. The regulars can receive what is offered by the faithful, but they cannot beg through the church. 2. They cannot use the pallium, or the rain cape, through the parish outside their own churches, or their enclosure; nor can they make processions, unless they have a custom to the contrary, as Rodriq. Bordon and Villalob say (2). 3. Those called to funerals should go to the church where the clergy are already assembled; but, as Salmanticus says with Lezana (3), there is a custom to the contrary. 4. It cannot be forbidden to the regulars to celebrate Mass in their churches before the parochial Mass, and to ring the bells, as declared by St. Pius V in the Constitution, Et si mendicantium, § 2. 5. The regulars cannot publish marriages. 6. They themselves can preach in their churches during the seasons of Advent and Lent, even if someone is preaching in the parish (4).

77. In three cases, the bishop can compel the regulars to obey, even by using censures: I. to restore things to the novices, as mentioned above, according to the Council of Trent, session 25, canon 16; II. to observe the

enclosure, speaking of nuns, Trent, ibid., canon 5; III. to observe everything that has been established by the bishop with regard to the celebration of Masses, as mentioned in no. 75. And concerning this, Benedict XIV refers (5) to two decrees of the Holy See, in which it was said that bishops, as apostolic delegates, can also compel religious with censures, and proceed against them, if they admit visiting priests to celebrate in their churches without the bishop's permission, according to the Council of Trent, session 22, decree on Observ. in cel., where it was prescribed, especially to the bishops: "Let them forbid any wandering, or unknown priest to celebrate Mass." Whether, then, in other cases mentioned above, the bishop can compel the regulars with censures; this is affirmed by Barb. Garc. and others; but it is more commonly denied by Sanch. Lez. and Salmanticus with others, because of many papal privileges that pertain to this matter; and they add, with Barb. Dian. Lez. (against others), that the bishop cannot even denounce excommunicated regulars, even for a public offense (6).

78. It is asked first, whether the regulars are bound by the decrees of provincial or diocesan synods, or by other precepts of the bishop? (1) De Synod. lib. 9, c. 15, n. 5. — (2) See Salmanticus, tr. 18, c. 3, n. 18 and 19. — (3) Ibid., n. 19. — (4) Ibid. — (5) De Synod. lib. 9, c. 15, n. 5. — (6) Salmanticus, cap. 5, § 3, throughout.

[*Latin ed. p. 659*]

OF THE PRIVILEGES OF CANONICAL REGULAR CANONS, ARTICLE 647. It is certain that canonical regular canons are not bound to attend synods, unless they are parish priests, as is stated in the Council of Trent, Session 24, Chapter 2. Furthermore, regarding the question at hand, Vasquez, Sanchez, Becanus, and others hold that they are obligated to observe all things that do not conflict with the observance of their rule; but this obligation is understood only in a directive sense, that is, to conform themselves to the common good of which they are a part, and not in a coercive sense, so that they incur no penalty for disobedience. Others, such as Suarez, Lezincourt, and Salmanticus, deny this (unless it is necessary to avoid scandal, or in a case where a religious has some office dependent on the bishop, such as the office of parish priest, confessor, or preacher). They support this view by citing Chapter 1 of the work "De Privilegiis," where it is stated that canonical regular canons are exempt from the commands of bishops, except in cases expressly provided by law. They argue that the reasoning of the opponents applies only when the parties are homogeneous, but not when they are heterogeneous, as is the case with religious, who have many particular obligations that are different from those of seculars. However, in two cases, they are without hesitation obligated to obey, as stated in the Council of Trent, Session 25, Chapter 12, I: regarding the observance of an interdict imposed by the bishop, always and as long as it is observed by the mother church; II: regarding the observance of feasts

established by the bishop (1); in addition to the regulations concerning the celebration of Mass, as mentioned above, number 75, at the end. Furthermore, it is noted that the bishop can prohibit canonical regular canons from hearing confessions in their own houses or cells, according to a decree of the Holy See issued on September 15, 1617, and this can be found in the writings of P. Ferraris (2). He can also prohibit all confessors from hearing the confessions of women or girls outside the confessional, under pain of suspension from hearing confessions, according to a decree of the Sacred Congregation of December 18, 1693; also found in Ferraris (3).

79. — Secondly, it is asked whether bishops can visit the persons and monasteries of canonical regular canons? Generally speaking, it is certain from "Nulli," Question 1, and from the Council of Trent, Session 25, Chapter 8, that the persons, monasteries, and churches of canonical regular canons are exempt from visitation by the bishop (provided that there are twelve religious living there; see number 88). And according to several declarations of the Sacred Congregation, even parish churches of seculars that are subject to canonical regular canons, and where the parish priest is a religious, cannot be punished by the bishop, even if he commits an offense in the exercise of his office. However, despite this, it has been declared and defined by Pope Benedict XIV in the bull "Cum nuper," issued on November 8, 1751, that such subjects are subject to the bishop "in those matters that pertain to the exercise of the care of souls, or even to their life and morals." But Pope Benedict XIV also discusses this matter more fully in a special bull, "Fit mandis," issued on November 6, 1744, where he establishes the following: 1. That parish priests who are canonical regular canons are in all respects subject to the jurisdiction, correction, and visitation of the bishop in matters concerning the care of souls and their own morals. 2. Regarding local visitation, they can visit the altar on which the Sacrament of the Eucharist is reserved, the sacred tabernacle, the baptismal font, the confessional in which the parish priest resides, the pulpit from which the parish priest preaches, the sacristy for inspecting the sacred vestments, the tombs of the parishioners, and their cemetery, [1] See Salmanticus, "Tractatus," 18, Chapter 5, paragraphs 2 and 4. (2) Ferraris, "Bibliotheca," article "Confessarius," number 4, paragraph 5. (3) Ibid., loc. cit., number 10.

[*Latin ed. p. 660*]

648 TRACT. XX. ON PRIVILEGES. The bell tower, if there are parish bells present, and all sacred vessels. 3. Regarding the personal aspects, one must examine the life and conduct of the pastor, as far as what has been manifested outside the enclosure; also, one must ascertain whether he legitimately holds the office, whether he resides there, whether he has attended the synod, whether he frequently holds conferences on matters of conscience, whether he fulfills the duties of the pastoral office, whether he

applies the Mass for the people, whether he has preached on feast days, etc.; whether he is available to hear confessions, whether he provides assistance to the sick, whether he instructs children before Confirmation and Communion; whether he inquires about impediments to marriage, and whether the betrothed have been instructed in matters of faith; and whether he keeps the parish books in proper order. 4. While the superiors of religious orders cannot, without the approval of the bishop, appoint someone to the care of a parish, they can nevertheless remove such a person, even without his knowledge; and likewise, the bishop can deprive him of the care of the parish without the consent of the superior, if there is a just cause for it, etc. He can also visit churches that are annexed to and subject to monasteries, if their administration is entrusted to secular priests, as has been declared on several occasions by the Holy Congregation, as cited by Bellarmine and Barbarelli. This exception does not apply if the monasteries are incorporated into the religious order, or if they belong to no diocese. Furthermore, the bishop can visit secular confraternities founded in monasteries, but only with regard to the administration of goods, and not with regard to the altars, as stated in the Council of Trent, Session 25, chapter 20, and in several decrees of the Holy Congregation. Moreover, those confraternities whose prefect is a religious are exempt, by the privilege of Gregory XIII, to which no contrary custom can be an obstacle (1). 80. — Thirdly, it is asked whether bishops can visit the cloisters of exempt nuns? Salmanticensis, along with Navarrense, Sanchez, Bonacolsi, Pellizzari, etc., deny this, based on chapter "Periculoso" of the work "De statu monachorum," section 6, where it is clearly stated that the superiors of religious orders are granted the care of the cloisters of exempt nuns. They argue that the Council of Trent, Session 25, chapter 5, does not stand in the way, from which proponents of the opposing view argue that bishops are apostolic delegates with regard to the cloisters of exempt nuns, since it is stated that they must ensure that the cloister is "restored or preserved in all monasteries" subject to them in the ordinary manner, and in others, "by the authority of the Apostolic See." However, they respond that in the latter case, it is not understood to apply to monasteries subject to religious orders, but to those subject immediately to the Pope, which, they claim, was declared by Pius V in his bull "Circa pastoralis"; moreover, the Council in the aforementioned passage renews, rather than revokes, the cited text from "Periculoso." Despite these objections, the contrary opinion, held by Barbos, Gavant, Lezan, etc., must be adopted, because, although the Council of Trent does not stand in the way, the bull "Inscrutabilis" of Gregory XV, dated 1622, does indeed stand in the way, in which it is stated: 1. that religious are not permitted to appoint anyone to hear the confessions of the nuns, except for someone who has been approved by the ordinary (and it should be noted that, furthermore, Benedict XIV, in his bull "Pastoralis," dated August 5, 1748, confirmed the bull "Apostolici

ministerii" of Benedict XIII, stating that if the superior of a religious order fails to appoint at least once a year an extraordinary confessor, or a secular priest, or a priest of another order, as the Pope commanded, the bishop of the diocese may appoint such a person). 2. Gregory XV also stated that the administrators of the monasteries of these nuns must render an account to the bishop regarding the administration of goods. 3. (4) Salm. tr. 28, c. 5, p. 52-56.

[*Latin ed. p. 661*]

DE PRIVILEGES OF REGULAR CANONS: 649. The bishop may remove the confessor, or any other administrator of the monastery, if the superior does not remove him after being warned. 4. So that the bishop may preside at the election of the abbess. And 5. It was specifically stipulated that the bishop may correct and punish, as a delegate of the Apostolic See, all those who commit anything against the cloister of nuns, even those who are exempt. It is fitting here to note the words of the bull: "Neither seculars nor regular canons can claim any privileges that would prevent them, if they commit an offense against those living within the enclosure, or against the enclosure of nuns, even those subject to the rule, from being punished and corrected by the bishop, as a delegate of the Apostolic See for this purpose" (1). And there, Barbos refers to a decree of the Sacred Congregation, in which it is stated that the bishops cannot in any way be prevented from visiting exempt monasteries, and those subject to the rule with regard to the observance of enclosure; and he who presumes to obstruct this, after the third warning, incurs excommunication by the very act, according to Clement (2). Furthermore, it should be noted in this place that Clement X and Clement XII ordered that the bull of Gregory XV be observed, "notwithstanding any contrary custom." 81. — Question 4: Can bishops demand an accounting from regular canons for an inheritance left with the burden of masses, or for legacies to be paid to seculars? They seem to be able to, based on what is derived from the Council of Trent, session 22, canon 8, where power is granted to bishops to visit all pious legacies, notwithstanding any privilege to the contrary. And Salm. says that, from this, the opinion in question may be considered probable. But he himself then denies it, due to many privileges granted to regular canons, especially by Pius V, in which the goods of religious are declared exempt from any jurisdiction of the bishop, notwithstanding any apostolic constitutions and councils (3). 82. — Question 5: Can the bishop proceed criminally against regular canons in another case? It has been said that regular canons are exempt from the jurisdiction of bishops, except in cases expressly provided by law. Besides what pertains to the celebration of masses and the enclosure of nuns, in two other cases, the bishops can proceed against them according to the Council of Trent. 1. If a regular canon commits a crime by living outside the monastery, Trid. session 6, canon 3. But this is understood with

respect to those who permanently reside outside the monastery, not with regard to that religious person who remains outside for the purpose of hearing confessions, or preaching, or another temporary business; or who resides in a village, or another place dependent on the monastery for the sake of religious affairs. But here arises a doubt, whether the bishop can punish that delinquent who resides in another place for a long time with the permission of his superior? Some affirm, such as Tamb., Barbos, Lez., etc., based on numerous declarations of the Sacred Congregation. Others, such as Salmant., with Sanch., Sylv., Peyr., Bord., etc., deny it, based on a chapter from a Rescript on the matter of jurisdiction, where it is said that he who remains outside the monastery with the permission of his superior, is judged to remain in the monastery. Therefore, they say that both the Council and the aforementioned declarations are to be understood to apply to those who reside outside the monastery without permission, or in a place so far from their superior that they cannot be punished, except after a very long time (4). (1) See Barbosa de potest. Episc. All. 109, note 7, and Salm. tr. 18, chapter 5, notes 57 to 59. — (2) See de Alox. de Monial. a. 6, 2, 4, question 5. — (3) Salm. tr. 18, chapter 5, notes 49 to 42. — (4) Ibid., notes 49 to 46.

[*Latin ed. p. 662*]

650 TRACT. XX. ON PRIVILEGES. 83.—The second case occurs when a religious, even one residing in a monastery, commits an offense outside of it, causing public scandal, and the superior fails to punish him. Council of Trent, Session 25, Canon 14. And because certain superiors were transferring such offenders outside the diocese, so that they might be exempt from punishment, Clement VIII, in the year 1596, in the bull *Suscepti oneris*, decreed that in such a case, at the request of the bishop, the superior must recall the offender within the time prescribed by the bishop and punish him; otherwise, the bishop of the place where the offender has been transferred may punish him (1). Furthermore, Salmanticenses and others note that: 1. This decree of the Council must be observed even if the offense is notorious, due to its public nature. 2. It does not apply to superiors who are not included under the name of regulars, as the Council states. 3. The bishop cannot proceed unless he has repeatedly warned the superior to punish the offender, and the superior has neglected to do so. However, if the bishop apprehends the offender in the act of committing the offense, he may take him (as has been said), but he must immediately transfer him to the superior; and if the crime is of grave scandal, he may even detain him in prison, so that he may be transferred, within at least 25 hours. The superior must then provide the bishop with sufficient evidence of the punishment that has been carried out. Although the bishop may obtain a summary of information, he cannot institute a legal process against the accused; but if he were to do so, it is likely that the superior could use this

to proceed against his religious, as Salmanticenses and others say (2). 84.—II. Regulars have the privilege of exemption from the payment of tithes. Taking advantage of this opportunity, certain things concerning tithes are noted here. Tithes are said to be that portion of the fruits, or of the industry of individuals, which is to be paid by the faithful to the ministers of the Church, for their support. Truly, tithes are due by natural divine law; but as for the quantity, that is, one-tenth, they are by ecclesiastical law, just as ancient divine law became judicial law. Hence, it follows that 1. The Pope can exempt anyone from the burden of tithes; the Pope, I say, not bishops: they alone can, according to Council of Trent, Session 21, Chapters 5, 6, and 7, apply tithes from one place to another, and unite and separate benefices (3). It is inferred that 2. Custom can rightfully exempt some from paying tithes, provided that there remains what is sufficient for the proper support of the clergy; but such a custom must have a prescription of forty uninterrupted years, even if, from the beginning, there was neither a title nor good faith; for prescription (taking the word according to its meaning of prescription, not as custom) requires good faith and forty years with a title; without a title, an indefinite period is required. Agreements can be made for future tithes; but only by the Pope, not by the bishop, unless it is between one Church and another. It is said for future tithes, because he to whom they are due can also remit them for past tithes (4). 85.—Formerly, as has been said, tithes were due both from the fruits of property and from the industry of persons. But according to the almost universal custom now in force, they are paid only from the fruits of both real and movable property, according to Chapter [omitted]. And they are due from the entire fruits, not after deductions for expenses and burdens.

(1) Salm. tr. 12, c. 3, n. 40-46.

(2) Ibid., n. 50 and 52.

(3) Ibid., n. 52 and 54.

(4) Ibid., n. 55.

[*Latin ed. p. 663*]

REGULAR CANONS: Regarding the privileges of regular canons, as Saint Thomas states (1) and others commonly assert, from chapter Cum non sit, concerning Decimæ (2), 86. Furthermore, Decimæ are to be paid by all the faithful, even by princes, but not by the poor; however, unless they are in extreme necessity, but only in grave circumstances, if they should come into a better financial situation, they are obligated to pay the past Decimæ, as Suarès, Laym, Castrop, and others, along with Salmanticenses (3), state. Regarding the common law, both clerics and religious are obligated to pay the Decimæ of their patrimonial goods, even if they have been assigned to the order of ordination; however, this does not apply to benefices, as Saint Thomas teaches (4). Concerning those who fail to pay the Decimæ, this is what the Council of Trent decreed in Session 25, Canon 12: "Those

who either withhold or obstruct [the payment of] them [the Decimæ] are excommunicated; and they are not to be absolved from this crime unless it is followed by full restitution" (5). 87. But whatever may be the case regarding ancient law, today, due to many pontifical privileges, all regular canons, even monks of any order (and also the Knights of Jerusalem) are exempt from Decimæ, not only on their personal property, but also on that of their estates, both those cultivated by tenants and those leased out (6). However, if they transfer property previously subject to Decimæ to regular canons, they are obligated to pay them, as is evident from several decrees of the Sacred Congregation of the Holy Office, found in Pignatelli (7). 88. III. Formerly, it was forbidden for regular canons to build new monasteries or to abandon those that had been built without the express permission of the Supreme Pontiff, chapter 1 of De Excess. prælat. in 6, from chapter 1 of De Bel. dom. in 7. Subsequently, they obtained various privileges; but all of these were limited by Urban VIII in the year 1624, in the bull Romanus Pontifex, where it was stipulated that new monasteries could not be accepted unless the canons of Trent and the bull of Clement VIII, Quoniam ad institutam, were observed. Therefore, today, three things are required to found a new monastery: 1. The license of the bishop. Some, such as Barbosa, Tamburini, and Pellizzari, according to the declaration of the Sacred Congregation, affirm that the license of the pontiff is also required; others, such as Salmanticenses, with Lezincq, Suarès, and Rodriguez, deny this. 2. That the consent of those whose interests are involved be present, and especially of all the existing monasteries within a space of four Roman miles; otherwise, the bishop cannot grant said license, unless those are unjustly opposing it (8). However, the Carmelites have the privilege that other orders cannot found a monastery where they themselves have a monastery within a space of 560 Florentine inches, and smaller ones within a space of 1200 inches, etc. Conversely, the Minorites and the Jesuits have the privilege of founding in places even not far away within the aforementioned space of 560 inches. And in all of these privileges, communion is granted. But these aforementioned privileges regarding inches are not understood according to custom with regard to monasteries that are founded in cities (9). 3. It is required that the new monastery be able to conveniently support twelve religious with its revenues or alms; however, it is sufficient that there be a probable hope within a short time of said sufficient support. If the monastery (meaning monasteries founded after the aforementioned bull of Urban VIII, issued in the year 1624) cannot support twelve (1) c. 2, q. 87, art. 2 ad 4. — (2) Salm. tr. 18, c. 3, n. 58. — (3) Ibid., n. 59. — (4) Loc. cit., art. 4, in comp. and ad r. ex c. Si quis Laicus, 16, q. 2. — (5) See Salm. r. 6s. — (6) Ibid., n. 72 ad 79. — (7) Pignat., t. 1, cons. 365, and vol. 3, m. 2. —

(8) Salm. tr. 18, c. 3, n. 124 ad 131. — (9) Ibid., n. 337 ad 140.

[*Latin ed. p. 664*]

652 TRACT. XX. ON PRIVILEGES. It was decreed by the Sacred Congregation, in several decrees confirmed by Gregory XV and Urban VIII, that religious houses which did not truly belong to them were subject to the bishop in all respects, with the following words: "Ordinary of the place, for visitation, correction, and all matters of jurisdiction, such monasteries erected without his consent, even if twelve brethren reside therein, and are, in fact, residing there, shall be considered subject to him" (1). The same conditions are required for the founding of monasteries for women. It should be noted here that, according to the Council of Trent and the Sacred Congregation, monasteries for women may not be founded outside the established area (2). 89.—The aforementioned conditions are not required for the founding of houses for religious, as noted by Peyr. Tamb., etc., at least (as limited by Lez.) if Mass is not celebrated there, and if there is no church (3). Nor are they required for the relocation of monasteries, which may be founded (as demonstrated by Salmanticenses, with Nav. Barb., Peyr., Lez., etc.) without the consent of the Pope, nor of the bishop, nor of other monasteries, provided that the relocation does not cause prejudice to them; for they say that they previously had such a privilege granted by several Popes; and that it is limited only to new foundations, which are not called the relocation of monasteries from one location to another within the same territory (or nearby), abandoning the old monastery. In such a case, the religious retain all the property and rights of the abandoned monastery (4). Furthermore, by the concession of Urban VIII and Innocent VIII, religious may, when one monastery lacks sufficient income and alms, unite and incorporate it with another (5). Moreover, they may freely return to abandoned monasteries, provided that the return does not cause any new prejudice to other monasteries (6). Furthermore, superiors of religious orders, by the concession of Sixtus IV and the same Urban VIII, may suppress miserable monasteries, transferring their assets to larger monasteries. It should be noted here that monasteries granted by universities, when abandoned, must be left in the hands of the ordinary; but if they have been built with their own revenues and alms, they remain in the ownership of the religious, so that they may freely dispose of them (7). 90.—IV. Regulars have the privilege of choosing a judge and conservator who will judge all cases in which religious are involved, and also in which they are the plaintiffs; but only when they are the plaintiffs, in cases of injuries and manifest violence inflicted upon them (8). 91.—V. Regulars have the privilege of admitting all those who wish to be buried in their churches. We note here certain important matters concerning burial, which are discussed more fully by the Salmanticenses (9). Anyone who has reached the age of puberty may choose their place of burial, even a bishop; unless they choose

a place for themselves, they must be buried in the cathedral (10). However, religious must be buried in the monastery, even if they die outside of it, provided that the place is not too far away. Novices may choose a place of burial outside the monastery; if they do not do so, they must be buried in the monastery, even if they die there, while others remain in the house with the permission of their superior (11). The same applies to commensals and familiares, who serve and reside in the monastery, under the obedience of their superior.

(1) Salm. tr. 18. e. 3. n. 129 et 130.

(2) Ibid. n. 138.

(3) Ibid. n. 152.

(4) Ibid. n. 153 ad 154.

(5) Ibid. n. 150.

(6) Ibid. n. 148.

(7) Ibid. n. 147.

(8) Ibid. n. 152 ad 178.

(9) Ibid. punct. 6.

(10) Ibid. n. 186.

(11) N. 187.

[*Latin ed. p. 665*]

DE PRIVILEGES OF REGULAR CANONS, SECTION 653: Furthermore, these [regular canons] are permitted to administer all the sacraments, except for baptism and marriage (1). Clerics and religious who induce others to promise, by oath, vow, or given faith, to choose burial in their own church incur very severe penalties (2). Those who die impenitent, and for whom it is publicly known that they have not confessed during the year, nor have they received Holy Communion during the Paschal season, are to be denied burial; and so too are heretics, excommunicates, and those who have taken their own lives, unless they show signs of repentance, as is stated in the *Ritual Romano*: "Public sinners of any kind, and those who die in the act of committing a crime" (as in the chapter on thieves, concerning theft), "without any sign of repentance; for then they are presumed to have died in sin, as the common doctors say, along with the *Ritual*, whatever Les and Sanc. may say" (3). Whoever buries such a person commits a mortal sin; and whoever buries a heretic, or a supporter of heretics, or a publicly excommunicated person, or an usurer, also incurs excommunication; and such deceased persons, if possible, should be removed from the grave. Furthermore, no one is to be denied burial in any case without the judgment of the bishop, or of the superior, if the body is that of a religious (4).

92. But let us return to the matter at hand, namely, the regular canons.

Several things are to be noted: 1. Any cleric, secular or otherwise, can choose burial in the church of the regular canons. And if someone had burial rights for their ancestors in that church, and had enough to say, "How long shall sinners, O Lord." 2. Parish priests who demand more from those burying the deceased in the church of the regular canons than they would demand in burying the deceased in the parish, in order to dissuade the faithful from choosing burial elsewhere, incur papal excommunication, as stated in the bull of Clement VIII, found among the writings of Salmant. And although the bull was issued for the parishes of India, Les, Peyr, and Salmant, along with others, understand that it was issued universally for all (6). 3. When a deceased person is to be buried in the church of the regular canons, the canons themselves must call and attend the parish priest; but if he refuses to come, or delays too long, they can themselves take the body and transport it to their church. This is the common opinion of Barb, Les, Peyr, and others, as stated by Salmant, from several decrees of the Holy See (7). The office over the body must then be celebrated, not by the parish priest or canons, but by the regular canons themselves. Nor can the parish priest perform this act in their church, nor can he compel the heirs to celebrate Masses, or a portion thereof, in the parish, as stated in several decrees of the Holy See (8). The same is to be observed for monasteries of exempt nuns (9). It should be noted, however, that lay people cannot be buried in the churches of nuns without the permission of the Holy See, unless someone has a right to burial there (10).

93. It is asked whether the regular canons are obliged to pay the canonical portion to the ordinary, or to the parish priest? There is a different canonical portion, which is due to the bishops for all donations made for the sake of death, and for legacies left to churches or pious institutions within their diocese, as stated by Clement Dudum, on burials. This portion was sometimes a third, sometimes a fourth of the inheritance; and Innocent III, in the chapter *Requisitis*, on testaments, decreed that the custom should be observed regarding the amount (10).

[*Latin ed. p. 666*]

654 TRACT. XX. ON PRIVILEGES. The fourth portion, properly called the funeral portion, is that which is due to the parish priest from funerals, legacies, and all that comes to the church in which the deceased had arranged to be buried. And this portion was also distinct, but regarding it, custom must also be observed (1). 94.—However, concerning the regular clergy, the monasteries of both men and women are exempt from paying the episcopal portion, according to the extravagant Intercunctas, § "Concerning all matters concerning privileges," and other privileges found in Salamanca (2). However, with regard to the fourth portion of the funeral expenses, by common law, the regular clergy were formerly obligated to

pay it; but today, considering their privileges and the Tridentine Council, Session 25, Canon 13, and the bull of Pius V, if the mendicants are obligated to pay it, it is only those monasteries that, before the Council was confirmed, were accustomed to pay it; thus, Salamanca states, with common opinion and numerous decrees of the Sacred Congregation, especially from the privileges of Sixtus IV, who imposed a penalty of excommunication and deprivation of benefices on parish priests who wished to demand the aforementioned fourth portion (3). However, those monasteries are excepted that paid the aforementioned fourth portion by a contract entered into, or by an ancient custom (4).

POINT II. ON THE PRIVILEGES OF THE REGULAR CLERGY IN PARTICULAR. 95, 96, and 97. I. Concerning the power to absolve subjects from sins and censures.—98. Concerning the reservation of cases, etc.—99. Concerning powers with regard to seculars.—100. Whether the regular clergy can absolve from sins reserved by the bishop by law, or by custom.—101. Whether from papal sins.—102. Whether in transit, or by the bull Cruciatae, etc.—103. Whether confessors of the regular clergy can be re-examined by the bishop.—104 and 105. II. Concerning dispensation in irregularities.—106. III. Concerning dispensation in ecclesiastical precepts, etc.—107. IV. Concerning the divine office.—108. V. Concerning dispensation of vows and oaths.—109. Concerning the vow of chastity of spouses and betrothed.—110. VI. Concerning the privilege of the religious, novices, and servants to confess to any priest, etc.—111. Concerning religious who are traveling.—112. Whether during a jubilee, etc.—113 to 116. VII. Concerning the reception into orders.—117 to 120. Concerning the collation of orders.—121 and 122. Concerning the celebration of Masses.—123. Concerning the administration of Holy Communion.—124 to 128. Concerning preaching.

95.—1. With regard to the power that superiors of the regular clergy have concerning the absolution of reserved sins and censures, it is necessary to distinguish here between the power they have over their subjects and that which they have over seculars. Under the name of superiors of the regular clergy are included not only generals and provincials, and their vicars who are substituted in their place, but also all local superiors, such as priors, guardians, rectors, and even their vicars, when they are absent, at least for the entire day. Thus, the doctors commonly state (5) from chapter 6 of the Abbot's work, on privileges. All of these can absolve their subjects first from all sins and censures not reserved to the Pope, even if they have been condemned by a person through a special sentence, as Salamanca states, with Lez, Cand, Pelliz, etc., from the privileges of Paul V, Sixtus IV, and Eugene IV (6). And what applies to the professors also applies to the novices, so that the latter can be absolved by superiors of the regular clergy from sins reserved by the bishop, incurred not only after entering, but also before, as Salamanca states, with Bon. Pell., etc., and P. Mazz. with Sanch.

Tamb., etc. (7). And Salamanca and Mazz. state the same with Peyr. and Tamb. (8), concerning those who...

(1) Salm. tr. 48, c. 5, n. 218.

(2) Ibid. n. 217.

(3) Ibid. n. 218 ad 228.

(4) Ibid. n. 220 ad 235.

(5) Ibid. c. 4, n. 1.

(6) Ibid. n. 25.

(7) Salm. tr. 13, c. 5, n. 87, and Mazzotta, vol. 3, de Bon. Can. cap. a. quæst. 1.

(8) Salm. tr. 25, c. 3, n. 88, and Mazzotta lecto citato.

[*Latin ed. p. 667*]

OF THE PRIVILEGES OF REGULAR CANONS. In Part 635, those who are to be received, for example, if they remain in probation in the monastery in order to receive the habit; and this is from a bull of Clement VII, cited by Candido, Rodrig., and Salmanticensis (1), in which it was granted to regular provincial chapters, and their vicars, or other designated persons, to absolve novices of the order from all reserved cases (except those cases mentioned in the Bull of Celibacy) incurred before their entrance, and from the censures attached to them. Someone might object to the decree of Urban VIII, cited in our work (2), in which it was established that, through the confirmation of privileges obtained by regular canons after the Council of Trent, the privileges granted to them were not to be understood as having been revoked by the Council, nor by the Sacred Congregation, regarding the absolution of reserved cases. Salmanticensis responds to this objection in the aforementioned passage; but their responses do not seem convincing, as we said in our work (3). A more appropriate response seems to be that the decree of Urban speaks of secular clergy, as does proposition 12, condemned by Alexander VII; but not of novices, who are commonly considered by doctors to be in a favorable state as religious. Thus, Sanch., Suar., Castr., Lez., and Salmanticensis (4) and others. This is especially true because Clement VIII declared it so, and Diana (5) recounts the privilege granted to the Jesuits (which, by extension, is extended to all religious orders), by which they can grant all the privileges of the society to novices. However, Bonac., Pelliz., and Salmanticensis (6) make an exception in the case where a judgment has already been initiated by the bishop against a novice, before he enters, because then (they say) the bishop could remove him and punish him. What is said about novices, the same is said by P. Maz. in the aforementioned passage, concerning the familiars of monasteries; provided that they are there as if they were family, and are continuous guests, as it is said in the bull Superna, of Clement X, 96. Secondly, regular canons can absolve their professed subjects and also novices, as mentioned

above (7), from all papal reserved cases, in the same way that bishops can absolve their subjects, according to chapter "It is permitted." And this is from the privilege of Pius V, extensively cited by Salm. and P. Concina, and confirmed by Benedict XIII in the bull "Pretiosus," in the year 1727, in which it was granted to regular canons the power to absolve even from cases mentioned in the Bull of Celibacy, except for relapsed heresy, falsification of apostolic letters, and the translation of prohibited things to non-believers. And incidentally, it should be noted that in the aforementioned bull, the general Dominican order was also granted the power to dispense from irregularity due to homicide committed by subjects, provided that the crime was not premeditated, and occurred within the confines of the monastery (8). But after I wrote these things, I discovered that Clement XII, in the bull "Romanus," issued on May 30, 1732, revoked all letters and constitutions with all privileges and faculties granted by Benedict XIII, restoring everything to its original state, as if the aforementioned confirmations had never been issued. Furthermore, it should be noted that, in the case of doubt, whether the revocation of the privilege for regular canons to absolve from heresy was to be understood only with respect to others, and not with respect to religious, the Sacred Congregation decreed that it was to be understood (97). Thirdly, regular canons can absolve their subjects from excommunication.

(1) Salm. tr. 10. de Censur. e. 10. n. 80.

(2) Lib. 7. p. 95.

(3) N. 103.

(4) Salm. tr. 15. e. 3. n. 85.

(5) Part. 3. tr. 2. Res. 75.

(6) Salm. l. c. n. 87.

(7) See our work l. 6. n. 593. v. Gamdeu.

(8) Ibid. lib. 7. n. 101.

(9) Ferrar. Bibl. verb. Absolvere.

[*Latin ed. p. 668*]

656 TRACT. XX. ON PRIVILEGES. communication, even for a serious, enormous, and public offense; inflicted not only on religious members of the same order, but also on those of another, and even on secular clergy; Castrop, Ronc, Salm, and Croix, and the privileges of Boniface IV and Clement VIII. And it should be noted that if the offense is slight or hidden, the religious person who committed the offense (if he wishes) can seek absolution even from a bishop, but with the permission of his superior (1). It is stated that the subordinates cannot absolve secular clergy, because in this case the jurisdiction is limited to religious orders within Italy, and outside of Rome by Clement VIII, as will be explained later in n. 99. 98. — It should also be noted that, by the grant of Clement VIII, the superiors of

religious orders can, if they deem it expedient, reserve eleven cases, but no more without the consent of the general chapter, or at least the provincial chapter for the province. The cases that the superiors can reserve are noted above in tr. 16, n. 130. If, however, the superior denies permission, and whether religious persons can be absolved by the superiors in the first instance for reserved cases, see there, n. 134. 99. — As for secular clergy, formerly, mendicant orders enjoyed the privilege of being able to absolve secular clergy from all reserved cases and censures, both by the Pope and by bishops. But then, by the decree of Clement VIII in 1602, confirmed by Paul V in 1617, and by Urban VIII in 1627, this power was limited, and it was established that religious orders existing outside of Rome and within Italy could not absolve secular clergy, neither from the cases of the Bull of Communion, nor from any of the six following: namely, 1, for striking a cleric; 2, for dueling; 3, for violating immunity; 4, for violating the enclosure of monasteries of nuns for an improper purpose; 5, for secret simony in benefices; and finally, from all cases reserved to them by bishops. Therefore, both from the aforementioned decree of Clement VIII and also from the Bull of Gregory XIII, *Cum a sacra*, and especially from proposition 12, condemned by Alexander VII, which stated: "Mendicant orders can absolve from cases reserved by bishops, not without the permission of the bishops," it is now beyond doubt that what some have said is revoked, namely that they cannot absolve secular clergy from cases reserved by bishops (2). Thus, they cannot absolve secular clergy from the six cases of Clement, even if they are hidden, contrary to P. Viva. The power that religious orders have from the Bull of St. Pius V, mentioned in n. 96, by which they can absolve hidden cases, is the same power that bishops have from chapter *Liceat*, but only with respect to their own religious members, not secular clergy. Nevertheless, we believe, along with P. Viva, Committolo, and others, to whom P. Conc. also adheres, that religious orders can absolve from cases that the bishop has reserved for himself in a synod, but has not expressly stated in a table, because then it is presumed that he intended to grant the power to absolve all confessors, provided that they are approved by himself (3). 100. — It is doubted 1, whether religious persons can absolve secular clergy from cases not reserved to them by bishops, but which are, by law, or by custom, reserved to bishops, such as abortion of a living fetus, and others noted in n. 46? Viva, Eord., Cabassut, Milante, and others deny this, because (they say) in the decree of Paul V and Urban VIII, it is forbidden for religious orders to absolve lay people from cases reserved by bishops: "From the same cases reserved by the ordinaries," are the words of Urban. Nevertheless, Concin. La-Croix, Sporer, Salmant, Lex, Sanch, and many others (3) Lib. 7. m. 107. — (a) See

lib. 6. n. 999. V. Gertum est, and l. 2. 198. — (3) Lib. 7. s.

[*Latin ed. p. 669*]

REGARDING THE PRIVILEGES OF RELIGIOUS ORDERS, Section 657, to which Father Viva also adheres in his Moral Theology (though retracting this), the reasoning is as follows: The cited words of the decree of Urban (and likewise, the decree of Paul V) must be understood as pertaining to cases which bishops reserve to themselves; for, as we have said in the preceding section, such decrees are confirmatory of the decree of Clement VIII, in which mention is made only of cases which are reserved to the bishops: "Nor of cases," says Clement, "which ordinaries reserve, or will reserve in the future." Moreover, as Father Suarès states, cases reserved to bishops are more properly said to be delegated to bishops, rather than reserved. However, it must be noted that this does not apply to the absolution of clerics, nor to all other cases which an ordinary might reserve to himself; for with regard to these, all power has been removed from religious orders, as stated in the preceding section (1). 101.

It is doubted whether religious orders can absolve secular clergy from cases reserved to the Papal See. Some, indeed, deny this, namely, Viva, along with Bordone and Florio, based on the same decrees of Paul V and Urban VIII, which also forbade religious orders from absolving from cases reserved to the Apostolic See. However, it is commonly and more probably affirmed by Bonacin, Aversio, Salmanticensis, Pellizzari, Rodriguez, Potestas, Peyrère, and even Viva himself in his Moral Theology (although he states this only with regard to cases secretly reserved by the Pope), based on the privilege granted to the Jesuits by Paul III in 1545, in which it was stated that they could absolve secular clergy from all sins, even those reserved to the Apostolic See, except for those contained in the Bulla Cœna. This does not contradict the aforementioned decrees of Paul V and Urban VIII, because those (as stated in the preceding section) are understood to refer to the cases of Clement VIII (which the aforementioned Popes intended to confirm), in which only the cases of the Bulla Cœna and six others were excepted.

It must be noted that this power is valid only with regard to the internal forum (2). Furthermore, it should be observed what was stated in section 31 regarding abbots who have quasi-episcopal jurisdiction.

It should be noted here that formerly, confessors of religious orders, by concession of Gregory XIII and Eugene IV, were able to hear confessions, not only of the subjects of the diocese where they were approved, but of all others. And by the Bulla Cruciata, when they were approved in one place, they were approved for all (3). However, Innocent X subsequently decreed that religious orders could not hear confessions anywhere without the permission of the local ordinary, even if they had the privilege of Cruciata, as declared by Innocent XII in the Bulla Cum Sicut in the year 1700 (4).

It must also be noted that formerly, according to Clement's decree Dudum, de Sepul., religious orders who were absolutely approved by the ordinary once could not be obliged to be examined again. However, St. Pius V, in the Extravagantes of the Roman Pontiff, stated that the successor bishop, for the greater peace of his conscience, could re-examine them. But later, Gregory XIII, in his Bulla In tanta negotiorum, etc. (cited by Navar in the end of his Manual), in order to resolve disputes arising concerning religious orders, revoked all the declarations of St. Pius V, and especially that concerning the approval of confessors of religious orders; I say, he revoked them to the previous state of the disposition of Trent, which, in Session 23, chapter 15, did not require anything else of religious orders except that they be approved by the Ordinary. Hence, many doctors, such as Aravia, Dicastilla, Villalobos, Delbos, etc., apud Salmanticensis (5), infer that:

(1) Book 7, section 99.

(2) Sections 96 and 97.

(3) Thus, apud Salmanticensis, Tractatus 18, chapter 4, pages 72 and 72.

(4) Our work, Book 6, section 548, third part, and 549.

(5) Salmanticensis, Tractatus 18, chapter 4, section 119.

[*Latin ed. p. 670*]

658 TRACT. XX. ON PRIVILEGES. It is not possible for a bishop to re-examine religious approved by another bishop. However, Diana, page 3, tract. 2, Resp. 21, and Lez. Bos. Bord. and many others, cite a decree of the Holy See (reported by Lez. and Diana) which declared that, notwithstanding the bull of Gregory XIII, a successor bishop could examine those approved by his predecessor; and Diana and Salmant themselves testify to this current practice of bishops. However, Salmant (1) with Villalob, states that, both from the constitution of St. Pius and from the declaration of the Holy See, an ordinary successor can again call to examination any or some religious whom he knows to be unsuitable; but he cannot, by a general edict, suspend all religious confessors until they are re-examined. Furthermore, it should be noted that when an ordinary generally revokes all licenses, this does not include religious, who are not included in such revocations unless they are expressly mentioned (2). It should also be noted that, when a see is vacant, a capitular vicar cannot call religious to examination, due to the privilege granted to them by Clement IV (3). Furthermore, the aforementioned provisions apply to absolute approvals, but not to those granted for a time, e.g., for six months, as is often the case; for it is certain from the bull of Innocent XIII concerning the Apostolic Ministry, confirmed by Benedict XIII, that both secular and religious confessors are not permitted to hear confessions outside the prescribed place, persons, and time, whatever privilege may be alleged to the contrary. See tract. 16, nos. 75, 104. — II.

On the power of religious to grant dispensations in irregularities. Religious are empowered, by the privilege of St. Pius V (reported in no. 96, confirmed by Julius II), to grant dispensations to their subjects in all hidden irregularities, in which ordinary pastors can grant dispensations to their diocesans, as stated in cap. Liceat, no. 29. And they can do the same with secular individuals, as stated by Suar., Sanch., Pelliz., Sayrus, Salm., Spor., Lez., etc., from the concessions of Sixtus IV and the aforementioned Julius II (4). 105. — Furthermore, religious can grant dispensations to their subjects in any irregularity, either due to a fault or due to a defect, by the privilege of Martin V (6). Therefore, to descend to particulars, superiors can grant dispensations to their subjects, 1. in irregularities due to homicide, not only hidden, as was granted in the privilege of Martin V, but also notorious and voluntary, as stated in no. 96, by the privilege of Benedict XIII, provided that the act has not been consummated and completed within the cloister. 2. Regarding defects of the soul, they can grant dispensations to a religious to receive the priesthood, even if he has suffered from permanent dementia, if, subsequently, the danger of that condition has ceased according to the judgment of physicians (6). 3. Regarding defects of the body, such as the absence of a foot or an eye, even if it is the left side, they can grant dispensations, as demonstrated by Salmant. (7) with Bordone, by the privilege of Sixtus IV. And in cases of doubt, they can also declare that the defect does not impede [ordination], as ordinary pastors can do with their subjects (8). 4. Regarding defects of birth, this irregularity ceases by the very profession of religious, as far as it pertains to the acceptance into the order, as is stated in cap. de Fil. presbyt.; however, a dispensation is necessary for dignities. But, from several privileges (as stated above, tract. 19, no. 87), they can grant dispensations (1) Salm. tract. 18, c. 4, no. 120. — (2) Ibid. no. 115, with common opinion. — (3) Ibid. no. 116, and Diana, p. 3, tract. 2, resp. 27. — (4) Lib. 7, no. 355. — (5) Nos. 355 and 396. — (6) No. 400, in § 29. — (7) Tract. 16, de Weir. c. 2, no. 75. — (8) See our work, lib. 7, no. 416, concerning § 3.

[*Latin ed. p. 671*]

OF THE PRIVILEGES OF REGULAR CANONS, IN PART 659, WITH ALL ITS CLAUSES, ALL SUPERIOR, PROVINCIAL, AND EVEN LOCAL CANONS (1). Moreover, as Sotto says, it is commonly denied that, by reason of profession, any irregularity ceases (2). 5. They can dispense in cases of even true bigamy, by virtue of the privilege of Martin V; thus, Castilian, Pellican, Maccius, and the authors of Salamanca, etc. (3). 6. They can also impose penalties for irregularity, even public ones, due to a lack of leniency (4). 7. And finally, they can dispense with their subjects in all incapacities and penalties incurred by reason of a fault, such as deprivation of office, benefits, the right to speak, the right to a place, etc., and if these are reserved to the Pontiff, as Suarès, Sanchez, Pellican, and Salamanca, among others,

state, by virtue of the privileges of Sixtus IV, Pius V, and Gregory XIV (5). 106. — III. Regular prelates have the power to dispense with their subjects in ecclesiastical matters, just as bishops have with their diocesans, as we said in section 2, number 57. Indeed, they have almost an episcopal jurisdiction, as the Doctors commonly teach, from Clementine De Electione (6). And therefore, they can probably dispense in all that which is not specially reserved to the Pontiff, as was said in the preceding section 2, number 58, and especially in cases where it is doubtful whether a dispensation is needed, as we said (7). They can also dispense with a just cause, as is always presumed, in pontifical laws, when they have been issued for a particular province or monastery; because then such a faculty is presumed to have been granted; or when such a custom exists, or when it is not easy to appeal to a superior, as in the case of matters of little importance, which do not involve mortal sin, or which occur frequently, such as fasts, abstinence from meat, observance of feasts, recitation of the Divine Office: provided that it is not dispensed with for a long time, as Salamanca, with Cajetan and Soto, say, etc. And the same applies to the rules of religious life (8). Thus, Azorín, Castilian, Salamanca, Trull, Macedo, etc., say that superiors can dispense with religious, as well as domestic servants, from working on feast days, but not with outsiders, who may be able to do something for the monastery if the monastery is poor, as Sylvester Fagnan and the authors of Salamanca, with Paschasius Leander, and others, say (9). See regarding this what was said in section 6, number 14. 107. — Regarding the Divine Office, note here the privileges that regular canons have. 1. Leo X granted to religious the permission to recite the hours privately, entirely mentally; (but P. Ferraris, in Bibliotheca, volume 5, article on Office, number 100 and 101, citing Sporer, says that this privilege is adulterine), and also to anticipate longer offices, and to reserve shorter ones for days of greater occupation. 2. Clement VII granted to all infirm regular canons (meaning those who are infirm in such a way that they are not excused from office) and to those who are ill, the permission to fulfill their office by reciting 6 or 7 psalms (to be assigned by the superior), 7 Pater Noster, and two Credo. And Martin V granted to convalescent religious the permission to fulfill their office by reciting that portion of the office which their confessor judges suitable. 3. Innocent IV granted to the nuns of Saint Clare (and thus it is understood for all other communities) the permission to fulfill their office by reciting the prayers of the conversae for any reasonable cause, e.g., if a religious is not properly instructed, according to the judgment of the abbess or confessor, in the office of the choir; or if she is scrupulous, or is weak from labor, or is occupied in useful tasks, as it was applied to religious who were to receive confessions (r), Book 7, numbers 554 and 426. See also Salamanca, section 10, chapter 9, number 57, and section 18, chapter 4, number 28, with Bordone, Peyrere, Le Nö, Pellican, etc. (2). See Salamanca, section 20, chapter 7, number 58. (3). See our work, book 7, numbers 555

and 453. (4). Number 469. (5). Salamanca, section 18, chapter 4, number 29. (6). Ibid., 6, 51, with Bordone, Pairer, etc. (7). Salamanca, book 7, number 58. (8). Numbers 84 and 88. (9). Number 87.

[*Latin ed. p. 672*]

660 TRACT. XX. ON PRIVILEGES. concerning preaching, or ecclesiastical study for the greater part of the day. For it is assumed that the religious, like the nuns, enjoy the privileges granted to them, as was said in n. 10. Furthermore, Salmanticenses hold that these religious can make use of such a privilege even without the permission of their superiors; for it was granted without that condition. Moreover, they observe that if the nuns neglect their secular duties by using such a privilege, they do not sin mortally, because they are then considered as laypersons, who are not bound by mortal sin to recite the prayers of their office. But this is not pleasing: for such a privilege does not transform the nun into a layperson, but only the office of her chanting is transferred, and changed into that of a layperson.

108 — V. Confessors of mendicant orders, and other regulars, have the power to annul, remit, and dispense with oaths and vows. But on this matter, see tract. 5, n. 42 and following. Moreover, they can dispense with spouses concerning impediments to marriage, due to incest committed with a relative of the spouse, as commonly stated by Sanch., Pontius, Salmanticenses, and others against the Council of Trent, from various privileges granted by different Popes (1). It must be noted here that the confessor must obtain special permission for this, and at least from his superior within his monastery (2).

109 — Furthermore, mendicant confessors can dispense with spouses concerning a vow of chastity taken before marriage, to allow for the consummation of the marriage, as commonly stated by Castilian, Pontius, Sanch., Tournhem, Wigand, Salmanticenses, etc., from the privilege of St. Pius V. And also concerning a vow of chastity taken after marriage, as rightly held by Sanch., Salmanticenses, etc. (against Pontius), from other privileges, from which they themselves can dispense in all vows, in which they are lawfully empowered to dispense, just as bishops can dispense with their subjects (3). What is more ambiguous is whether, in cases of necessity, they can dispense with betrothed couples, as bishops can in a vow of chastity for the purpose of contracting marriage? Most affirm, as Anacl., Vidal, Bass., Henriq., etc., that Salmanticenses and Elbingen consider this opinion probable. But Laym., Barb., Sanch., and Pontius commonly deny it, saying that regulars can dispense only in vows in which bishops are empowered to dispense by ordinary law, but not by extraordinary law, as in this case. The opponents, however, reply that in cases of necessity, bishops can also dispense by ordinary law, since such power is attached to their office and dignity, as was said in n. 34 and 41. Therefore, we cannot consider the first opinion to be improbable (4).

110 — VI. When dealing with laypersons, the faculty is granted to choose a confessor, either from the Supreme Pontiff, or from their own ordinary; it is always understood that if the confessor is approved by the bishop; but regulars, with the express or tacit permission of their superior, can confess to any simple priest: which is commonly held by Suar., Lugo, Salmanticenses, etc. (5). Therefore, all superiors of regular orders can choose any priest as their confessor, as the doctors also commonly say from chapter 12 of the book *De Paenitentia* and *Remissio*. The same applies to the servants of the monastery, as is stated in the Council of Trent, session 25, canon 11, from which it follows that they can receive the sacraments of penance, the Eucharist, and extreme unction from the religious. And the same applies to (s) See book 6, n. 1076, see above. — (2) Ibid., see "But whether..." — (3) N. 687, see "But whether..." and n. 1128. — (4) Ibid., near the end. — (5) Salm. tr. 19, c. 4, n. 49.

[*Latin ed. p. 673*]

OF THE PRIVILEGES OF RELIGIOUS ORDERS, PART 661: Those who enter under favorable conditions, bearing the name of religious, as all acknowledge, and as the Sacred Congregation declared on August 14, 1665, can, therefore, be absolved by the bishop from all reserved cases (1), as stated in number 93. However, this does not apply to chaplains of Saint James and similar positions, as Salm states with common opinion, for such a custom prevails (2).

111.—It should also be noted that religious who are traveling, if they have a companion (provided he is suitable) of the same order, must confess to him. If, however, there is no companion, or another priest of the same order, they can confess to any suitable priest, whether regular or secular: this is common to all. But the question arises whether such a priest must be approved in that place? Some, such as Wig, maintain that he must, but most, and rightly so, deny this, including Suarez, Roncaglia, Castro, Salm, and Elbing, among others. And since this is the custom of religious orders, which implies the consent of the ordinaries; and since Innocent VIII absolutely granted to traveling religious that, if they could not have a confessor of their own order, they could choose « any other suitable priest, religious or secular » (3). See what we have said in volume 16, number 88.

112.—Furthermore, Lugo (4) and Salamanca (5), along with Navar, Soto, Castro, Peyrère, Buss, and others, state that during the Jubilee year, regulars, and even nuns, may confess to religious of another order without the permission of their superiors, even if they had a confessor of the order assigned to them, due to several privileges pertaining to Lugo, Mendo, and others (6).

113.—VII. Regulars, with regard to receiving orders, do not receive dismissal letters from bishops, but from their superiors; otherwise, they sin gravely and incur suspension. However, with regard to receiving orders,

Pope Pius V initially granted them the privilege of receiving orders from any bishop; but this was revoked by Gregory XV. This revocation was confirmed by several other pontiffs, and recently by Benedict XIV, in the bull Impositi, etc., in the year 1747, in which it is also prescribed that, if the ordinary of the place holds ordinations, the religious must be examined and ordained by him; if the bishop is absent or does not have ordinations, he can be ordained by another bishop; but in that case, a genuine attestation is required from the vicar general, secretary, or chancellor of the bishop, stating that either he is absent from the diocese, or that he will not be holding ordinations in the near future, according to ecclesiastical laws. And the same Pope expressly declares that it is not sufficient to say that the bishop will not be holding ordinations if they are held outside the prescribed times; otherwise, they incur the same penalties as those who are ordained without dismissal letters. Furthermore, it is forbidden to a religious to continue his work elsewhere, so as to excuse himself from the examination of the bishop of the place where he previously resided. Religious who reside in dioceses that are *nullius* (without a bishop) must be ordained by the nearest bishop (7).

114.—Here, the following questions arise: 1. From whom should novices be ordained? Suarez and Henry state that they should be ordained by the ordinary of either the place of origin or the place of domicile. But Sanchez, Castro, Delboe, and Fagnan, along with others, believe that they can be ordained by the ordinary of the place where the novitiate is located. La Croix and P. Mazzola rightly state that both opinions are probable, provided that (in the case of the second opinion) the novice intends to remain permanently in that monastery.

(1) Salm, volume 18, chapter 4, number 57.

(2) Ibid., number 58.

(3) See our work, volume 6, number 575.

(4) D. so., number 86.

(5) Volume 18, chapter 4, number 124.

(6) See our work, volume 6, number 536. See also the addendum.

(7) Numbers 768 and 788, Note 8.

[*Latin ed. p. 674*]

662 TRACT. XX. ON PRIVILEGES. It is inquired whether, in the case of religious orders, a juramentum [oath] should be given to the superior in which they are, and whether this matter should be confirmed by an oath, as is prescribed in the bulla *Speculatores* (1). It is secondly inquired whether religious can be ordained outside of the permitted times. Vasquez, Lezincano, and others deny this; for they say that, although Gregory XIII granted this to the Jesuits, he nevertheless forbade communication [regarding it]. But today, there is no longer any doubt that they can, both from the

many privileges granted to other religious orders, and from the declaration recently made by Benedict XIII in the Roman Council (title 5, chapter 2), in which it was established that such privileges remain in full force, and that it has not been established that they have been repealed (2).

116. It is thirdly inquired whether, when religious are ordained outside of the permitted times, they can be ordained on any day on which the double office is celebrated, even if it is not a feast of precept? Fagius, Villalobos, and others affirm this, and it is considered probable by Suarez and others; for Alexander VI, when dealing with such a privilege, said that ordinations could take place on Sundays, or on double feasts; but he did not say on feasts of precept. I do not dare to reject this opinion; however, I consider the opposite opinion, held by Lugo, Morio, and Escobar, to be more probable, because Gregory XII, when dealing with the same privilege, declared, saying: "on Sundays, and on feast days," and he did not say "double feasts." A feast day is properly understood to be that in which work is forbidden, from which it is understood to be a feast of precept. Indeed, the practice is that for all those who are ordained by dispensation, the same rule applies for three feast days.

117. Regarding the power of conferring orders, formerly, abbots regular, by a concession made to them in the Seventh Council (as is found in canon *Quoniam*, Dist. 166), could administer tonsure and minor orders, not only to their own religious subjects, but to all others. However, by the decree of the Council of Trent, session 23, chapter 10, this power was limited to the abbots for their regular subjects only. Nevertheless, despite this, many doctors maintained that abbots, at least mitred abbots (as Salmantine believes, and cites several decrees of the Holy See), could also ordain their secular subjects, and even others who held letters of dismissal from their ordinaries; nevertheless, all these opinions no longer hold today after the decree of the Holy See, approved by Urban VIII on January 17, 1642, in which any contrary opinion was rejected, and it was forbidden for abbots to confer orders, or to grant letters of dismissal, to anyone other than their own regular subjects, and a suspension was imposed on those who acted contrary to this. However, many are excepted who are described in the Roman chancery and who have the privilege of granting letters of dismissal, such as the abbot of Monte Cassino, the abbot of Cava de' Tirreni, etc. (4).

118. It is inquired here 1. whether abbots who have almost episcopal jurisdiction in some separate territory, can ordain their secular subjects? Molinæus, apud La Croix (5), cites a positive declaration of the Holy See. But Benedict XIV (6) cites another contrary declaration, and also cites the decision of Pius Zacharias, apud La Croix, in the same place.

119. It is inquired 2. whether abbots who can ordain professed subjects, can also ordain novices? Castresano, Barbatus, Sayreras, and others deny this. However, it is more commonly and probably affirmed by Suarez,

Laym, Sanchin, Escobar, and Salmantine (1).

(1) Lib. 6. n. 765.

(2) N. 797. Dubit. 5.

(3) N. 797. Dubit. 4.

(4) N. 763.

(5) Croix, lib. 6. p. 2. n. 2356.

(6) De Synod. l. 2. c. 21. n. 15.

[*Latin ed. p. 675*]

OF THE PRIVILEGES OF THE REGULAR CANONICS, PAR. 663, AND OTHERS: Since, in favorable circumstances, those who regularly come under the name of regular canons also include novices (as we have said in n. 110). 120. – It is asked: 3. Whether orders conferred by such abbots, whether secular or regular, who are not subject to any, are valid? Suarez, La-Croix, etc., deny this. But it must be affirmed, with Sanch., Salm., Tamb., Pelliz., etc., that this faculty (as we have said) was formerly granted to abbots, and that subsequently, by the Council and by the decree of Urban, it was forbidden to them only as an exercise of that faculty; hence, they validly, although illicitly, confer orders. And that this is the case is evident from the same decree of Urban, in which those who have been ordained are subject to suspension. Therefore, orders conferred by them are considered valid. And this has been decided repeatedly by the Holy See, as Benedict XIV (1) states. 121. – 8. With regard to celebrating Mass and administering the Eucharist, formerly, by privileges of Sixtus IV, Alexander VI, and Urban VIII, they were able to celebrate in a portable altar, both in their own houses and in their rural houses, commonly called "graces," even against the will of the bishop. But Clement XI, in the year 1703, by his decree, declared that all their privileges of celebrating in a portable altar were revoked by the Council of Trent. And Benedict XIV declared the same in the bull "Magno," § 29. Moreover, I cannot agree with P. Mazz. who says that these prohibitions are to be understood as applying to private houses, but not to the houses of religious; for in the decree of Clement, it is a question of the privilege of celebrating in places where they reside; and the places where they reside are their own houses, not those of others. Furthermore, Innocent XIII, in the year 1723, in the bull "Apostolici ministerii," forbade "that an altar be erected in private cells or chambers of regular canons, under any pretext whatsoever." (2) However, it should be known that Gregory XIII granted the provincials of the Jesuits the faculty of establishing public oratories in their churches, in which all could celebrate, etc. (3). 122. – By the privilege of Gregory XIII, regular canons can celebrate one hour before dawn, so that they can celebrate Mass three hours before sunrise; thus, Lug., Suar., Rodriq., Salm. (4), etc. Indeed, if there is a just cause, they can celebrate immediately after two hours after midnight, by the privileges

of Alexander VI and Clement VIII. And Lugo, Rodriq., Diana, Narb., and Salmant., with others, say that these privileges were not revoked by the Council of Trent, session 22, on observations and things to be avoided, etc. However, these aforementioned doctors maintain that this applies only to their own churches; in which, however, (they add) even secular priests can use this privilege (5). Furthermore, Eugene IV granted regular canons the license to celebrate three hours after noon, provided there is a just cause; however, Azor., Fagnan., and others say that this privilege was revoked by the bull "Amantissimus" of St. Pius, in the year 1566, of which Lez. cites a declaration of the Holy See. But, despite this, Lugo (6), Salm., with Avers., Dicast., Narb., Diana, etc., authentically state that there is no declaration of this revocation by St. Pius, who spoke only of Masses celebrated in the evening, even perhaps around sunset; hence, they say that the privilege of Eugene IV remains in force, and that to make use of it, it is sufficient to have any reasonable cause, such as for recovery of health, study, and the like. As for administering the Eucharist, Paul III, and other Pontiffs, (1) See work 1. 6. n. 766, and de Synod. 1. 2. c. 11. n. 15. — (2) Salm. tr. 15. e. 7. n. 97. — (3) See our work, 1. 6. n. 560, and ibid. v. Hanc. — (4) apud Merat. p. 1. tit. 15. ad lit. Y. — (5) Salm. tract. 15. e. 7. n. 94. — (6) De Lugo de Euch. D. 20. n. 27, et Salm. ibid. n. 95.

[*Latin ed. p. 676*]

664 TRACT. XX. ON PRIVILEGES. It was granted to regular clergy the faculty of administering the sacraments in their own churches to all the faithful. However, this is excepted in the following cases: 1. If the bishop reasonably prohibits someone from receiving the Eucharist. 2. In the case of communion at the hour of death or in danger, provided that there is no extreme or grave necessity, and the parish priest is either unable or unwilling to administer it, Lugo, Ronc., etc. (1). A third exception is for Easter communion, that is, the one by which one fulfills the precept, as the authors Filliuc, Sa., Busemb., etc., say. See what has been said on this matter in tract. 12, nos. 41 and 124. — IX. Regarding the faculty of preaching, formerly, regular clergy, according to Clement. Dudum, de Sepult., could freely preach in their own churches and in public places; but the Council of Trent, session 5, canon 2, decreed that they could not preach in foreign churches without the permission of the ordinary, and in the churches of their own order, before obtaining the blessing of the bishop. Therefore, for religious to preach in their own churches, it is sufficient that they ask for the blessing, even if it is denied, as Lez., Pelliz., Bord., and Salm., among others, say, citing a decree of the Holy Congregation (2). But, as Salm. says, such a blessing is not required for them to preach in public places; for the Council speaks only of churches. However, regular clergy must always have the approval of their superiors, who would be guilty of sin if they allowed them to preach without any prior examination (3).

Moreover, superiors can authorize even tonsured secular clergy to preach, by virtue of the privilege of Gregory XIII; although the Holy Congregation has generally declared that preaching can be entrusted to any tonsured person (4). 125. — Regarding foreign churches, as stated, regular clergy cannot preach there without the permission of the ordinary, unless it is for only two or three times, as Nav., Barb., Diana, and Salm., among others, say; or unless the ordinary is not present, and a religious person happens to be passing by; because in that case, the parish priest can grant permission to preach, as Gregory XIII granted (5). However, when the ordinary grants permission, the religious person is entitled to preach in the parish, even if the parish priest objects, because the ordinary is the superior of the parish priest, and because this was expressly granted by Alexander IV (6). 126. — It is asked: 1. Whether it is permissible for regular clergy to preach, if the bishop objects? If these are foreign churches, and the bishop initially denies permission, it is undoubtedly not permissible. But if the bishop has already granted permission, and then wishes to revoke it, or if the churches are their own, Peyr., Vega, Pell., and Salm., among others, with Diana, etc., say that they can preach. But this is contradicted by the fact that the Council of Trent states (session 24, canon 4): "No one," whether secular or regular..., shall presume to preach, if the bishop objects." Furthermore, the bull of Gregory XV, Inscrutabili, states that the bishop, as a delegate of the Apostolic See, can punish religious "who presume to preach in foreign churches of their own order, without having asked for a blessing, or if the bishop himself objects." But Salm. responds that both the aforementioned bull and the Council should be understood according to what is stated in Clement. Dudum, cited above, in which it is forbidden to preach when the bishop is preaching, or when preaching is done solemnly before him. And so, this decision was referred by the Holy Congregation of Bishops and Regulars on January 30, 1629, apud Barb. (8). However, when I consulted Barbosa in the cited passage, I found that the Holy Congregation declared (1) See our work, book 6, nos. 239 and 240. — (2) Salm., tract. 18, chap. 4, no. 178. — (3) Ibid., no. 176 and 177. — (4) Ibid., no. 174. — (5) Ibid., no. 184. — (6) Ibid., no. 189. — (7) Ibid., no. 184. — (8) In Trid., session 5, canon 2.

[*Latin ed. p. 677*]

ON CHARITY AND PRUDENCE, CONF. 665, applies only insofar as it concerns sermons given in the churches proper to the regular clergy. Therefore, with regard to churches that are not their own, the aforementioned response does not seem probable to me.

127. It is asked whether the bishop has the power to examine religious men who request permission to preach in churches that are not their own? The Sacred Congregation, according to Barb. (1), on January 12, 1628, decided affirmatively; but Salm. (2), along with Pelliz. Bord., Diana, Peyr.,

etc., object, citing the bull of Leo X, *Superna*, in which it was decreed that no one should be admitted to preach "unless he has first been examined by" his superiors, respectively; and it was then declared therein that the religious man must show the approved of his superior. Salm., along with Pelliz. and Granado, then state that the aforementioned declaration of the Sacred Congregation, which is contrary to their view, is not more than probable; therefore, the bull of Leo should not be preferred. But, I say, at least it is probable from the aforementioned declaration that the bishop has the power to examine, and otherwise he may deny permission. Conversely, the bull of Leo prohibits bishops from admitting a religious man who does not present the approval of his superior; but it does not forbid him from examining him, if he wishes, and from denying permission, if he himself refuses to be examined.

128. It must also be noted that, according to the decree of the Lateran Council V, the ordinary has the power to suspend and punish regular preachers in three cases, in which, indeed, they themselves are suspended from preaching by that very act: 1. if they preach false or uncertain things; 2. if they preach prophecies not founded on Holy Scripture, or not approved by the Apostolic See; 3. if, by preaching, they detract from bishops and their superiors. Furthermore, according to the fifth session of the Council of Trent, canon 2, the bishop can suspend and punish those religious men who preach heretical, erroneous, or scandalous propositions (3). Finally, it should be noted that Urban VIII, in the constitution *Alias felicis res*, etc., dated April 11, 1635 (fully detailed in P. Ferrar., *Bibl.*, vol. 5, word "Oracula," p. 342, n. 9), revoked all privileges previously granted to regular clergy concerning the living voice oracle, except for those that had been testified to by ministers to whom, by virtue of their office, faith is usually given.

TREATISE XXI. ON CHARITY AND PRUDENCE OF THE CONFESSOR.

POINT ONE.

1. On the charity of the confessor in receiving the penitent.

2. In hearing him.

3. In correcting him.

4. On the prudence in questioning, admonishing, and disposing.

5. General remedies.

6. Particular remedies.

1. There are four offices that a good confessor must exercise, namely, those of a father, a physician, a doctor, and a judge. As for the offices of

a doctor and a judge, enough has been said about them in this work in all the treatises presented up to now. Now it remains to speak of the office of a father, to which charity pertains, and of the office of a physician, to which prudence pertains. Confes- (1) In Trid. sess. 5. c. 2. — (2) Salm. tr. 19. c. 4. n. 196. — (3) Salm. ibid. n. 188.

[*Latin ed. p. 678*]

666 TRACTATE XX. ON CHARITY AND PRUDENCE IN CONFESSION. It is necessary that the confessor, in order to properly fulfill the duties of a good father, be filled with charity. And first, he must show charity by receiving all with kindness, whether they are poor, uneducated, or sinners. Some spend their time only hearing the confessions of certain devout individuals or respectable persons, because they lack the courage to repel those who might offend them. However, if a miserable sinner approaches, he is scarcely heard, and is driven away burdened with reproaches; thus, that poor soul, after having made the greatest effort to come and confess his sins, feeling himself so harshly received, begins to harbor hatred for the sacrament of penance, and, despairing of finding someone who will help him and absolve him from his sins, falls headlong into the mire of a lost life, and falls into the despair of salvation. Conversely, good confessors act differently; when such sinners come to them, they receive them kindly, and (as if rejoicing over a captured prey), they rejoice, realizing that their lot has fallen to rescue a soul from the hands of the demon. They know that this sacrament was properly instituted not for the just, but for sinners; indeed, venial sins, in order to be forgiven, do not require sacramental absolution, since they can be atoned for in many other ways; they also know that Christ Himself declared these words: "For I came not to call the righteous, but sinners to repentance." Mark 2:17. Therefore, the confessor, filled with the spirit of charity, the more he finds souls defiled by sin and wickedness, the more he embraces them with greater charity, and gives them comfort with these or similar words: "Come, brother, be of good cheer, do not be afraid; confess your sins boldly. Open everything confidently, let nothing shame you. It does not matter if you do not delve into every corner of your conscience: it is enough if you answer the questions. Give thanks to God, who has waited for you until now. Now you must change your life. Rejoice, because God certainly forgives all your sins, no matter how great, if you have a good will; and therefore He has waited for you so that He may have mercy on you. Therefore, say everything with a cheerful spirit, do not hide anything."

2. Secondly, he must show even greater charity in receiving confessions. He must take care not to show impatience or boredom: nor should he display astonishment at the sins that are recounted. If the penitent is not so hardened or impudent as to expose more and more terrible sins without any blush, and without any sign of disgust or emotion, then he must use all

his strength to make the penitent understand the deformity and magnitude of those sins; therefore, in such cases, a sharper correction is required, so that he may be awakened from a deadly lethargy. It is true, as the doctors say, that confessors should refrain from correction during the act of confession, lest the penitent be frightened and conceal his sins; nevertheless, this is understood in the strict sense of the word; however, it often happens that it is necessary not to proceed further, and to correct the penitent immediately, especially if he confesses a very heinous sin, or if he himself is accustomed to some vice, so that he may understand the gravity of the sin. However, he must take care not to exasperate or frighten him. Therefore, after he has corrected him as much as necessary, he must immediately encourage him to confess the remaining sins, saying: "Come, brother, do you want to repent of this vice? Is that so? And since you are willing to do so, be of good cheer. Therefore, tell me the rest of your sins, nothing hidden." Be careful, I beg you, not to commit any sacrilege; for this would be...

[*Latin ed. p. 679*]

DE CHARITY AND PRUDENCE, CANON 667: "This is the greatest of all the sins you have committed until now. Therefore, say with a strong heart, 'I will conquer myself; I will confess everything sincerely, for God is ready to have mercy on you.'"

3. Then, at the end of the confession, it is also necessary that the confessor approach with greater zeal and dedication, so that the penitent may understand the gravity and multitude of his sins, and the miserable state of damnation in which he finds himself; but this must always be done with the greatest charity. However, it is more fitting to use more serious words at that time, so that he may better return to the path of good; nevertheless, he must ensure that the penitent understands that what is said to him does not come from an angry heart, but from singular love and compassion for his soul. This can be expressed in this way: "My son, do you consider the life of the damned, which you have led? Do you realize the evil you have done? What has your God ever done to you, whom you have so wickedly despised? If Jesus Christ had been no enemy to you, could you have behaved worse with him? But, I beg you, consider who this Jesus is. He is the one who, though God, needing nothing, became man for your sake; he willed to die on the cross to redeem you from hell. Ah! my son, if you were to die now, if in this very night, as you were about to go? Where would you be now? You would be in the eternal fire of hell. What would become of you if you continue to live as you have lived so far? Can you be saved in this way? Wake up and see that, unless you change your ways for the better, you are already damned. What good have you gained from so many sins? Do you not realize that you are preparing for yourself a double hell, one here of anguish and misery, and another there of punishments? Come, my

son, turn away from evil, stop sinning, and entrust yourself entirely to the arms of God, which are extended to receive you; you have already sinned enough. I want to help you with all my strength and with all my heart; come to me whenever you wish, for you will find a father who will receive you kindly. Now, firmly resolve to become holy. Stand firm; for God is always ready, and therefore this time has been given to you to turn away from evil and do good. Oh! how good it is to have God as a friend!"

(St. Francis de Sales, in order to attract sinners, took particular care to ensure that they themselves knew the peace enjoyed by those who adhere to God, and the unhappy life led by those who are alienated from God.) Afterwards, he would help him to form acts of contrition, and, if he is disposed, he would absolve him, and suggest salutary remedies by which he may keep himself from sin, and impose penance upon him (but these matters will be discussed in the following sections).

If, however, he is incapable of absolution, or if it seems expedient to postpone absolution, he will assign him a day on which he must return, saying to him in this way: "Come, brother, I expect you on that day; do not fail to return to me; be strong and courageous, as I have told you; commend yourself daily to the blessed Virgin, and come to me. If, perhaps, you find me hearing the confessions of others at that time, approach, for I will hear you before others. If I am elsewhere, make arrangements for me to be summoned; I will abandon everything to hear your confession." And thus, he will dismiss him with gentle words. This is the way in which such sinners can be attracted, namely, by dealing with them with as much charity as possible; otherwise, if they come to a confessor who treats them harshly, they will be horrified by confession, neglect to confess, and rush headlong into perdition.

4. The art of medicine requires prudence, which requires that the confessor, in order to properly treat his penitent, first know the causes and

[*Latin ed. p. 680*]

668 TRACT. XXI. ON CHARITY AND PRUDENCE. To discover the origin of all spiritual infirmities, one must inquire about the habit, the occasions of sin, the place, the time, and the persons with whom the sin was committed. And from these, one must direct oneself to make the necessary corrections, which one must never omit with anyone, no matter how distinguished they may be; nor with princes, magistrates, prelates, pastors, or priests, when they accuse themselves of grave sins, and without excessive sensitivity. For, although milder and more discreet words may be used in such cases, greater mental fortitude and zeal should be employed, because the sins of these individuals can often lead to more pernicious consequences, due to the greater harm their bad example can inflict on others. Therefore, if they neglect their duty, admonition must not be omitted, even if they are acting in good faith. With others, however, who suffer

from some fault through innocent ignorance, one must consider whether admonition is advisable, or whether it would be more beneficial: see the aforementioned treatise, section 16 (when we spoke of confession, number 108). Then, after hearing the confession, the confessor must proceed to prepare the penitent for absolution through acts of sorrow and purpose of amendment. Again, it should be noted what we said in treatise 16, number 105, at the end: that if the penitent is unprepared, the confessor is obligated (as Suarez, Laym, and others say) to do everything in his power to prepare him, regardless of what others may expect or whether they leave. In the same treatise, 16, number 15, we spoke of the prudence that the confessor must exercise in assigning penances that are suited to the spiritual strength of the penitent, so as not to burden him with a load greater than his strength allows. But above all, the confessor must strive to apply the most appropriate remedies, by which the penitent may remain in God's grace.

5. — Regarding the sermon to be given on the remedies that should be suggested to penitents, I say that some are general, and others are particular, for a particular vice. The general remedies should be suggested to all: 1. Love for God, since He created us for this purpose alone. And one must also ensure that the penitent understands the inner peace that is given to those who enjoy God's friendship, and the hell that those who are estranged from God experience even before their time: along with the temporal ruin that sin brings. 2. Frequent recourse to the Blessed Virgin, by reciting the Rosary; to commend oneself to one's guardian angel, and to a particular saint as protector. 3. Frequent reception of the sacraments, and if one has ever fallen into mortal sin, to confess immediately. 4. Consideration of eternal truths, and above all, consideration of death; and to families, it should be suggested that they have daily mental prayer in common, or at least the Rosary together with their children. 5. Awareness of God's presence when temptation arises, by saying: "God sees me." 6. To examine one's conscience each evening, with sorrow of mind and purpose. 7. To join a religious group, and for priests, mental prayer and thanksgiving after Mass. And to read at least one spiritual book before or after Mass.

6. — The particular remedies will be assigned according to the diversity of vices: for example, to those who are held by some hatred, it should be suggested that they commend daily to God the person they hate, reciting the Our Father and the Angelic Salutation for him; and when they feel disturbed by the memory of the injury done to them, they should remember the insults they themselves have inflicted on God. To those who have fallen into shameful sins, it should be suggested that they avoid idleness, bad companions, and occasions of sin; and to those who have contracted a bad habit over a long period of time...

[*Latin ed. p. 681*]

OF THOSE WHO ARE IN IMMEDIATE DANGER, etc. 669 This vice:

that he not only avoid immediate occasions, but also certain remote ones, which, being so weak, will become immediate for him. To this person, above all, it must be impressed that he never cease to recite the Angelic Salutation three times in honor of the purity of the most blessed Virgin, in the morning and evening, always renewing before her image the purpose of not sinning, and making the supplication that he may obtain perseverance. Moreover, the confessor should take care that he frequently receives Holy Communion, for it is said that the Eucharist "begets virgins." To those who are accustomed to uttering blasphemies, it should be suggested that they sign themselves with the cross nine times, or five times, with their tongue, upon the earth, and that they say daily at least once the Our Father and the Angelic Salutation in honor of the saints into whom they have blasphemed, and that every morning, as soon as he rises from bed, he renew the purpose of patiently enduring occasions of anger, and that he say three times to the Blessed Virgin every morning: "My Lady, grant me patience." And this will not only serve to ensure that the most holy Mary will protect him, but also that, in occasions, he will be disposed to say those very words. Or that he accustom himself to say, "Cursed be my sin, cursed be the demon," etc. The confessor will assign other remedies according to his prudence, considering the circumstances of the occasions, the persons, and the duties.

TREATISE ON THE LAST MATTER. HOW THE CONFESSOR SHOULD BEHAVE WITH PENITENTS OF DIFFERENT CLASSES.

CHAPTER I. 1 to 7. Point I. Of those who are in immediate danger. — 8 to 15. Point II. Of the habitual and relapsed. — 16 and 17. Concerning the correction of those ensnared by a wicked habit. — 18 to 30. Point III. Of the questions to be asked of penitents with a neglected conscience; and I. of the questions to be asked of penitents according to the order of the precepts. — 31. II. Of the questions to be asked of penitents of different states and conditions; and I. Priests. — 32. II. Nuns. — 33. III. Judges; IV. Scribes; V. Physicians. — 34. VI. Surgeons and apothecaries; VII. Merchants; VIII. Tailors. — 35. IX. Courtesans and prostitutes. — 36. X. Barbers and makers of false hair (commonly called wigs); and here we speak of young men who style women's hair. — 37 to 41. — Point IV. Of children and girls. — 42 and 43. Point V. Of those devoted to piety. — 44 and 45. Point VI. — Of the mute and deaf. — 46 and 47. Point VII. Of the dying. — 48 and 49. Point VIII. Of the condemned. — 50 to 53. — Point IX. Of those vexed by demons. — 54 and 55. Point X. Of women.

POINT I. HOW THE CONFESSOR SHOULD BEHAVE WITH THOSE WHO ARE IN IMMEDIATE DANGER OF SINFUL ACTS.

1. — The greatest care of the confessor should be to conduct himself properly with those who are in immediate danger of sin, or who are accustomed to vice, or who are relapsed. These are two great obstacles against

which the majority of confessors stumble and fail. In the following chapter, we will speak of the habitual and relapsed; here, of those in immediate danger. It is certain that if men tried to avoid occasions, a greater part of sins would be avoided. Satan, when occasions are removed, gains little; but when a man deliberately throws himself into an immediate occasion, he almost always sings the song of the victor, the enemy. Occasion, especially in matters of impurity,

[*Latin ed. p. 682*]

670 TRACT. FINAL. HOW ONE SHOULD BEHAVE, etc. Pleasures are like a net that draws one to sin, and at the same time blinds the mind; so that a person sins without realizing what they are doing. But let us proceed to practice. An occasion is first divided into voluntary and necessary. A voluntary occasion is one that can easily be avoided. A necessary occasion is one that cannot be removed without serious harm or scandal. Secondly, it is divided into proximate and remote. A remote occasion is one in which a person rarely sins, or one that is found everywhere. A proximate occasion, speaking in general terms, is one in which people commonly and frequently fail. A proximate occasion by accident, or with respect to a particular person, is one that, although not proximate with respect to others, is proximate with respect to a particular person, either because this person frequently falls in such an occasion, or because it can prudently be feared that they will fall due to their known weakness. Some authors do not consider an occasion to be proximate unless a person has almost always, or very frequently, fallen in it; but the more common and truer opinion teaches that a proximate occasion is one in which someone has frequently sinned (1). However, it must be noted that just as sometimes an occasion that is commonly proximate with respect to others may be remote with respect to a very pious and cautious person (2), so conversely, certain occasions that are commonly remote with respect to others may be proximate with respect to someone who, due to past relapses and a perverse inclination to a certain vice (especially if it is shameful), has become very weak and easily tempted: and in such a case, this person will be obliged to remove not only proximate occasions, but also those that, with respect to themselves, become proximate. 2. — Examples of proximate occasions include: 1. someone who keeps a woman in their own home with whom they frequently have relations; 2. someone who frequently blasphemes or cheats in games; 3. someone who has frequently become intoxicated, or engaged in quarrels, or uttered obscene words or thoughts in a certain tavern or house. Furthermore, none of these can be absolved unless they have removed the occasion, or at least promise to remove it, according to the distinction that will be made in the following section. And likewise, someone who always sins when they enter a certain house, even if only once a year, cannot be absolved; for such an entrance is already a proximate

occasion. Nor can those be absolved who, although they do not sin when presented with the occasion, give others grave scandal (3). Some doctors (4) add that absolution should also be denied to someone who does not remove an external occasion if it is accompanied by a vicious habit, or a great temptation, or a vehement passion, even if they have never sinned in that occasion before; for they can easily sin if they do not remove themselves from the occasion. Hence, they say that if a certain maid were ever tempted by a young man, and she knew herself to be easily tempted, she would be obliged to leave that house if she could, otherwise she would be rashly presuming that she was safe. 3. — And here, confessors should be careful not to allow betrothed couples to visit each other's homes, and not to allow the betrothed of girls to enter their homes, because it rarely happens that such betrothed couples do not sin, at least in words or thoughts, in such an occasion, since all the glances and conversations between betrothed couples are incentives to sin, and it is morally impossible for them to converse and not feel the urges for those shameful acts that will then follow during marriage. In general, speaking of adolescents and young women who are attracted to each other, (1) Book 6, n. 45a. — (2) Ibidem. — (3) Ibidem. See the preceding. — (4) Ibidem.

[*Latin ed. p. 683*]

OF THOSE WHO, ON OCCASION, ETC. 671, are in love, not all of these are indistinctly guilty of a grave fault, but I believe that they are ordinarily very difficult to keep from committing a mortal sin in the immediate occasion. This is abundantly clear from experience; for of a hundred young people, scarcely two or three will be found immune from mortal sins in such a situation; and if not at the beginning, at least as time passes. For such ardent individuals first converse with each other because of their inclination, then the inclination becomes passion, and passion, once it takes root in the heart, clouds the mind, and leads them to commit a thousand sins. Therefore, Cardinal Picus de Mirandola, Bishop of Cento, warned confessors in his diocese by edict not to absolve such ardent individuals, if, after having been warned three times by others, they had not refrained from such love, especially at night, or for a long time, or secretly, or within houses (where there is an easy danger of kisses and touches), or against the command of their parents, or when the other party utters obscene words, or with scandal (as if in a church), or with married women, cloistered nuns, or clerics in holy orders. And in this matter, it must generally be noted that when there is a danger of a formal sin, and especially of a shameful sin, the more rigorously the confessor treats the penitent, the more he will benefit his salvation; and conversely, the more lenient he is in allowing the penitent to remain in the occasion, or to indulge in it, the more harmful he will be to him. St. Thomas of Villanova calls confessors who are indulgent in this matter wickedly pious. This is charity against charity. In these

cases, penitents often try to make the confessors believe that removing the occasion will cause a great scandal. The confessor must be strong enough to disregard such fears; for the greater scandal is always to be seen that the penitent, even after confession, does not remove the occasion. Either others are ignorant of his sin, and then they will suspect nothing evil; or they know, and then the penitent will recover his reputation, rather than lose it, by removing the occasion. 4. — Many doctors believe that someone who is in a proximate, even voluntary, occasion can be absolved for the first or second time, even before the occasion is removed; provided that he has a firm intention and promises to remove it immediately. But here it is necessary to distinguish, as St. Charles Borromeo (in the instructions for confessors given by him), between occasions that are in existence and occasions that are not in existence. An occasion that is in existence is, for example, when someone keeps a concubine in the house, or when a maid consents to the advances of her master, and the like. An occasion that is not in existence, on the other hand, is, for example, when someone blasphemes in a game, or when, by frequenting taverns, he falls into quarrels and drunkenness, or when, by attending banquets, he indulges in obscene words and thoughts. With these distinctions made, it must be said that, as St. Charles teaches, in occasions that are not in existence, absolution can be given once, twice, and even three times to a penitent who firmly promises to abstain from them; but if, after that, he does not remove the occasion, and sins in the same way, he cannot be absolved, unless he first removes the occasion. But in occasions that are in existence, with St. Charles, absolution must be absolutely denied, unless the occasion is completely removed. And we have, in general, approved this opinion in our book (1). The reason is that such a penitent is not disposed to receive absolution if he asks for it before removing the occasion; for by receiving it, he exposes himself to pro- (1) Lib. 6. 9. 456.

[*Latin ed. p. 684*]

672 TRACT. ULT. QUOMODO SE GERERE DEBEAT, etc. The greatest danger lies in breaking one's resolution and thus remaining in the same sinful situation. Let us explain this more clearly. He sins mortally who is in a proximate, voluntary occasion of sin, and does not remove it; but when it is extremely difficult to remove the occasion, and it can only be done with great effort, that effort is difficult to impose upon one who has already received absolution, because, having lost the fear of remaining without absolution, it is easy for him to persuade himself to resist the temptation without removing the occasion, and thus, by remaining in it, he certainly relapses; as is daily proven by many penitents who, having received absolution from a somewhat careless confessor, do not afterwards pay attention to removing the occasion; and immediately relapse into a worse state. Hence, we say that, on account of the aforementioned danger of breaking

one's resolution, the penitent sins mortally if he asks for absolution before removing the occasion, and the confessor sins more grievously if he grants him absolution.

5. — We have said, ordinarily speaking, for several cases are excepted by doctors (1), in which the penitent can be absolved before removing the occasion. And the following cases are excepted: 1. The case in which the penitent exhibits such extraordinary signs of sorrow that it can be prudently judged that he is no longer in imminent danger of breaking his resolution to remove the occasion; for then those signs indicate that the penitent has been granted a greater grace, by which he is rightly separated from the need to constantly remove the occasion. However, if absolution could always be conveniently postponed, I would postpone it until he has, with effect, removed the occasion. 2. The case in which the penitent cannot return, or can only return after a long time; then he can be absolved, if it is judged that he is well disposed to immediately remove the occasion; because in that case, the danger of breaking his resolution is considered to be removed, due to the great burden that the penitent would have to bear by remaining without absolution, or by having to repeat his confession with another priest, or by remaining for a long time without the grace of the sacrament. Therefore, when he is in a certain moral necessity of receiving absolution before removing the occasion, he has the right to be absolved immediately (2); for since he cannot remove the occasion before absolution, he is considered to be in a state of necessity. But this is not even to be admitted if the penitent has already been warned by another confessor to remove the occasion, and has not done so; because in that case, he is considered a recidivist, and therefore he cannot be absolved, unless he exhibits extraordinary signs of sorrow, as we will say in the following paragraph, no. 12.

6. This applies to a proximate, voluntary occasion. But if the occasion is necessary, either physically, as if someone were held in prison, or was in danger of death, in which he would not have time or means to remove a concubine; or morally, that is, if the occasion could not be removed without causing scandal, or serious damage to life, reputation, or honor, as the doctors commonly teach; in that case, the penitent can be absolved without removing the occasion; because in that case, he is not obliged to remove it, provided he promises to take the necessary measures to ensure that the occasion becomes removed, such as, in the case of a scandalous sin, avoiding familiarity with the accomplice, and as much as possible, avoiding even seeing him, frequenting the sacraments, and often commending himself to God, renewing daily (especially in the morning) before an image of the Crucifix the resolution not to sin again, and (1) Lib. 6. n. 454, v. Dixi. — (2)

N. 454, v. Excipiendus 2.

[*Latin ed. p. 685*]

OF THOSE WHO ARE IN OCCASION, etc. 673: As far as possible, the occasion of sin should be avoided. The reason is that the occasion of sin is not, in itself, a sin, nor does it necessarily lead to sin; therefore, a true sorrow and a firm purpose of amendment can be compatible with the presence of an occasion. While everyone is obligated to remove the danger of sin, this is understood when the person willingly exposes themselves to such danger. But when the occasion is morally necessary, then the danger is removed by appropriate remedies, and God then does not withdraw His grace from those who have sincerely resolved not to offend Him. For Scripture does not say that he who is in danger will perish, but that he who loves danger. But it cannot be said that one loves danger when one is unwillingly subjected to it; therefore, as St. Basil says: "He who, by some urgent cause and necessity, exposes himself to danger, or allows himself to be in it, although he would not otherwise, is not so much said to love danger, as to endure it unwillingly; and therefore God will provide more carefully that he not perish." 7. Hence, the learned doctors say that those who do not wish to abandon some office, business, or home in which they have been accustomed to sin, because they cannot do so without serious detriment, are rightly absolved, provided they have a true and constant purpose of amendment and of employing the means necessary for amendment; such are, for example, surgeons who have fallen into the habit of treating women, or priests who have fallen into the habit of hearing their confessions, if, by abandoning these duties, they could not live according to their station (1). But all agree that in such and similar cases, it is advisable to postpone absolution, so that the penitent may be more diligent in following the prescribed remedies. However, I believe that the confessor can, and even should, postpone absolution, whenever it can be done conveniently, especially when the matter concerns a grave sin; for he is, as it were, a physician of souls, and is obligated to apply the most appropriate remedies; and I believe that the most suitable remedy is not to be found for one who remains in the proximate occasion of sin, than to postpone absolution to him, since it is abundantly clear that many, after receiving absolution, neglect to follow the prescribed remedies, and thus easily relapse. Conversely, when absolution is postponed to someone, he will be more vigilant in employing the means and in resisting temptations, for fear of being dismissed again without absolution when he returns to the confessor. Perhaps someone will consider me too strict in this matter; but I have always acted in this way in practice, and I will continue to act in this way with those who are in the proximate occasion of sin, even if they have a necessary and extraordinary sign of sorrow, unless a special necessity is shown to me to absolve them immediately; and in this way, I believe, I do much more for the salvation

of the penitents. Oh, if all confessors acted in this way! How many sins would be avoided, and how many souls would be saved! I repeat what I said above: when it is a question of freeing the penitent from a formal sin, the confessor should be guided by more lenient opinions, as far as Christian prudence allows; but when lenient opinions bring the danger of a formal sin closer, as happens in this matter of proximate occasions, I say that it is always advisable, and sometimes necessary, that the confessor use stricter judgments; for then these are of much greater benefit to the salvation of souls. But if someone, by remaining in a necessary occasion, always relapses in the same way, even after remedies have been applied, and there is little hope of amendment, then I say (2) om- (1) Lib. 6. n. 455. — (2) N. 457. 43

[*Latin ed. p. 686*]

674 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. To this young man, absolution must be denied until he removes the occasion [for sin]. And here, I believe, the precept of the Gospel is present: "If thy eye offend thee, pluck it out" (1), except in the case where the penitent demonstrates signs of extraordinary sorrow, so that a prudent hope of amendment can be conceived (2).

POINT II. HOW THE CONFESSOR SHOULD BEHAVE WITH REGARD TO HABITS AND RELAPSES.

8. — Those who have formed a habit must be distinguished from relapsed sinners. Those who have formed a habit are those who have contracted a habit in some sin, of which they have not yet confessed. These, as the Doctors say (3), can be properly absolved the first time they confess of this evil habit, or if they confess of it after having retracted, provided they are disposed by true sorrow and a firm purpose to employ effective means for amendment. However, if the habit is deeply rooted, the confessor may also postpone absolution for that person, to test how steadfast his repentance is in putting the prescribed means into practice, and so that he himself may come to conceive a greater horror of his vice. It should be noted here that five occurrences in a month can constitute a bad habit in some external sin, provided that there is some interval between them. And in matters of fornication, sodomy, and bestiality, a much smaller number can constitute a habit; for example, if someone were to fornicate once a month for a year, he could rightly be called habituated.

9. — Relapsed sinners, on the other hand, are those who, after confession, have relapsed in the same or a similar manner without amendment. These, as is commonly taught (4), cannot be absolved if they present only ordinary signs, that is, if they simply confess, asserting that they repent and intend to amend, as is stated in Proposition 60, condemned by Innocent XI. For the habit contracted, and the past relapses without any amendment, give strong suspicion that the sorrow and purpose which the penitent claims

to have are not genuine. Therefore, absolution should be postponed for such individuals for a time, until a prudent sign of amendment appears. And in this matter, the ruin of souls is lamented, because of so many bad confessors who indiscriminately absolve so many relapsed sinners. When these sinners find confessors who always absolve them so easily, they lose the fear of sinning, and continue to wallow in the mire of vices until death. Some Doctors (5) admit that a relapsed sinner can be absolved with only ordinary signs up to the third or fourth time; but I have never been able to agree with this opinion, since a person who relapses after one confession without amendment is already a true relapsed sinner, and gives a well-founded suspicion of his lack of proper disposition. And it should be noted here that this rule applies even with regard to venial sins; for although it is commonly admitted that it is easier to absolve those who fall into minor sins, because their occasions are more frequent; nevertheless, it is a common opinion (6) that it is a grave sin and sacrilege to receive absolution over those who have confessed minor sins without true sorrow and purpose, and that it is not sufficient to be sorry for the multitude, or the excessive number, of such sins, but rather to be sorry for some particular one, as we have explained in Tract 16, no. 33, contrary to the opinion of some.

(1) Mark 9, page 46.

(2) Book 6, no. 457, and Ibid., see the word "Secus."

(3) No. 459.

(4) Ibid., see "Recidivus."

(5) Ibid., see "Prima et seq."

(6) Ibid., see "Ratio est" at the end.

[*Latin ed. p. 687*]

ON HABITS AND RELAPSES. 675. It is to be feared that such confessions are sacrilegious, or at least invalid. Therefore, the confessor must diligently consider whether to absolve such penitents without distinction; for then, even if they are in good faith, he himself cannot excuse himself from sacrilege, by granting absolution to those who may not be sufficiently disposed for it. Therefore, if the confessor wishes to absolve a penitent without sin, he should either prepare him to feel sorrow, especially for some slight fault from which he is more horrified; or he should suggest to him that he confess some more serious sin from his past life, against some precept (for it is sufficient that he confess in general, without specifying the number), so that he may have a certain matter upon which absolution can be based; otherwise, even for this penitent, absolution should be postponed for some time. 10. I say "for some time," because it is not necessary to postpone absolution for relapsed sinners, whether of minor or major faults, for years or months, as Juveninus too rigidly desires (1); but it will be sufficient if the sin proceeds from intrinsic weakness, to delay it for eight

or ten days, as the learned author of the book published in Rome, entitled *Istruzione per li novelli confessori* (2), states; and the same author says in the booklet accepted throughout Italy, entitled *Istruz per li confessori di terre e villagi* (3), where, for this doctrine, he cites Louis Habert (4). They also add that a delay of a month is excessive and dangerous, because after so much time, it becomes difficult for such penitents to return. And this judgment is favored by Pope Benedict XIV, in the Apostolic Constitution *Bulla*, issued on June 26, 1749, § 22 (5), where, speaking of confessors who postpone absolution to properly penitent people, he then warns them: "Let them invite them to return as soon as possible, so that, having returned to the sacramental forum, they may receive the benefit of absolution." Note the words, "as soon as possible" and "they may receive." In short, (I say) absolution can be postponed for fifteen or twenty days. But those who confess during the time of the Paschal precept should be excepted: for these, a longer period of experience is required, since a just suspicion can be held that these abstain from relapse rather to avoid censure than from a true intention of changing their lives. Those who have fallen into temptation through a recent external occasion should also be excepted; for these need a longer period of experience, since the occasion, as has been said in the preceding point, is a stronger incentive to sin. However, an experience of a month is always sufficient. Nevertheless, the confessor should take care not to tell the penitent to not return until after a month, for this would terrify him too much with such a long delay: rather, he should urge him to return after eight or fifteen days; and thus, in a gentle manner, he should encourage him to receive absolution at the end of the month. 11. Therefore, to absolve relapsed sinners, ordinary signs of sorrow and intention are not sufficient, but extraordinary ones are required, which, according to common opinion (6), certainly suffice to grant absolution; for that extraordinary sign (provided it is solid and well-founded) removes the suspicion of indisposition which arises because of relapses. The bishops of Belgium, assembled in the year 1697, rightly stated this point in a decree issued for the guidance of their confessors, speaking as follows: "In the conversion of a sinner, God does not so much consider (r) See book 6, no. 465. — (a) Part. r. c. g. no. 225. — (3) Chapter 1, § 4. — (4) In *Praxi Pœnit.*, tr. 4, page 417. — (5) Bull. vol. 3, Edit. Mechl. vol. 7, p. 501. — (6) Book 6, no. 457. See *Recidivis* at the end.

[*Latin ed. p. 688*]

676 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. measure of time, which is the measure of suffering (1). "Therefore, they forbade confessors, by a firm rule, from demanding from penitents who are still relapsed an experience of a considerable length of time, before granting them absolution. And rightly so, for the mere passage of time is not the sole sign of a changed will, since the will of the sinner is changed by the power of divine grace,

which does not require time, but sometimes acts immediately; therefore, the change of will can be well recognized by other signs, without the experience of time. Indeed, other signs of the actual disposition of the penitents sometimes manifest the change of will much better than the passage of time, because such signs directly show the disposition, while, conversely, the experience of time shows it only indirectly; for it often happens that someone abstains from sin for a long time, and yet is still unwilling. Therefore, the author of the cited book (I. on the new confessional) says (2): 'If the relapse arises from one's own fragility, without any other external, voluntary cause, it is almost temerity to say that every relapsed person is unwilling.' And elsewhere (3) he says that a relapsed person should be absolved because of the force of evil habits, always provided that he shows a firm will to use the means for amendment, thus stating: 'We judge that to do otherwise is too harsh, and that the confessor, by doing so, would stray from the spirit of the Church, and of the Lord, and of the nature of the sacrament, which is not only a judgment but a salutary medicine.' 12. - There are more such signs, as taught by the doctors (4). I. A greater sorrow manifested by tears (provided they are true compunction), or by words proceeding from the heart, which can sometimes be more certain signs than tears. II. A smaller number of sins (understand that the penitent has been in the same occasions and temptations to sin); or if the penitent perseveres in grace for a considerable time after the last confession, for example, for 20 or 25 days, when he used to fall several times a week; or if he has relapsed after great resistance; or even if he has abstained for a long time from mortal sins to which he was accustomed before coming to confession. III. Diligence applied for amendment, as if the penitent diligently avoids occasions, fulfills the prescriptions given by the confessor, or uses fasts, prayers, alms, etc., to eradicate the vice. IV. If he asks the confessor for remedies, or for new remedies for amendment; also, if he promises to fulfill the means that the confessor suggests to him at that time; especially if he has never been advised to use them; but I do not think one should completely trust these promises if other signs are lacking, since penitents easily promise to obtain absolution, but afterwards they find it difficult to carry them out. V. Spontaneous confession, namely, if the penitent comes not merely to fulfill the Paschal precept, nor out of some personal benefit by confessing at certain times, such as on the Lord's Nativity, on the feasts of the Virgin Mary, and the like; nor is he prompted by parents, a lord, or a teacher, but comes entirely spontaneously, and truly inspired by divine light, solely for the purpose of receiving divine grace. Especially if he has undertaken a long journey to confess, has abstained from a considerable profit, has suffered a great inconvenience, or has overcome a great internal or external conflict. VI. If he comes moved by some extraordinary impulse, such as after hearing a sermon, or after the death of a friend, or because of

(1) Ap. Croix, book 6, page 2, no. 1833. – (2) Part I, chapter 15, no. 556. –

(3) Chapter 9, no. 213. – (4) Book 6, no. 460.

[*Latin ed. p. 689*]

ON HABITS AND RELAPSES. 677. Fear of an impending scourge, such as an earthquake, plague, etc. VII. If the penitent confesses past sins with humility and silence. VIII. If the penitent, before approaching, restores what was taken or makes amends for damage to reputation. IX. If, through the admonition of the confessor, he shows that he has grasped a new understanding and horror of his sin and the danger of his damnation. Others add other signs, such as if the penitent willingly accepts a severe penance; if he asserts that he repented of the sin immediately and that it has ceased; if he declares that he would rather die than sin. But I do not know if these signs alone are sufficient; rather, I would say that they may serve to aid other signs that are not sufficient on their own. 13. Finally, there is always some sign by which it can prudently be judged that the penitent has changed his will, and in such a case, he can be absolved; for, although the confessor must be morally certain of the penitent's disposition in order to absolve him, it must be noted that in other sacraments, in which the matter is physical, physical certainty is also required; but in this sacrament of penance, since the matter is moral, namely the acts of the penitent, moral certainty is sufficient, or rather, relative certainty, as has been proven (1): that is, it is sufficient that the confessor have a prudent probability of the penitent's disposition, without any prudent suspicion to the contrary; otherwise, it would be difficult for any sinner to ever be absolved, for all the signs of penitents are based only on a certain probability of their disposition. The author (of the Instruction for the New Confessors) says: "Nothing more is required to administer penance than a prudent and probable judgment of the penitent's disposition; therefore, if the circumstances do not create a prudent doubt that he is not sufficiently disposed, the confessor should not trouble himself, nor the penitent, to obtain evidence that he is not (2); see tract. 16 n. 117, in fine. And here it should be noted concerning bad habits, that relapsed sinners in blasphemies can more easily be absolved than in other sins of hatred, theft, or lust, in which habits are more deeply ingrained, due to the greater concupiscence, or inclination, found in them. 14. It is said that the confessor can grant absolution to a habitual and relapsed sinner when he appears to be disposed by an extraordinary sign; but it is not held that he must do so, because he can also postpone absolution if he deems it expedient, as the common doctors teach (3). For, although the penitent, after confessing his sins, has the right to absolution, he does not have the right to be immediately absolved; for the confessor, like a physician, can, and sometimes must, postpone absolution when he judges that such a remedy is necessary for the salvation of his penitent. But is it generally advisable to use this remedy, or not without the consent of the penitent?

It is certain that it is not advisable when delay can bring more harm than benefit; and the same is said by the doctors when, because of the delay, the penitent would have to suffer some mark of infamy, or danger (4). Outside of these cases, some prefer that absolution be postponed for such relapsed sinners. However, others generally believe that it is rarely advisable, and this is also the opinion of the celebrated missionary of our time, Father Leonard of Port Maurice, in his learned discourse published in Rome, entitled, "Discourse Mystical and Moral." Me- (1) Lib. 6. n. 57, in fine, and n. 461. (2) P. 1. c. 15. n. 268. (3) Lib. 6. n. 462. (4) N. 465.

[*Latin ed. p. 690*]

678 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. Nevertheless, it must be said that in this matter, no certain rule can be established, but the confessor must act according to the circumstances that present themselves: he should commend himself to God, and, according to what he feels inspired to do, he should act accordingly. This is my opinion. If the penitent has relapsed due to an intrinsic weakness, as happens in the sins of anger, hatred, blasphemies, lust, or carnal pleasures, I say, with the common opinion of the Doctors (1), that it is rarely advisable to delay absolution for a recidivist when he is disposed; for it should be hoped that the grace of the sacrament will be more beneficial to him than the delay of absolution. 15. — I say due to an intrinsic weakness; otherwise, a different course of action should be taken with one who has relapsed due to an external occasion, even if it is a necessary one; for the occasion excites a more intense concupiscence, and the presence of a companion stirs the senses more strongly, and makes the inclination to sin more intense than does the wicked habit within; and therefore, the penitent in an external occasion should exert a great effort, not only to overcome the temptation, but also to remove himself from the familiarity and presence of the companion, so that the danger may be removed from close proximity. And this is all the more true if the occasion is voluntary, and it should be completely removed; for then, the one receiving absolution, before removing the occasion, remains in great danger of breaking the resolution made to remove it, as we have shown in the preceding section, no. 4. Conversely, in the case of an intrinsic cause, the danger of violating the resolution is less, since, on the one hand, there is no external object that drives him so violently to sin; and, on the other hand, he does not voluntarily retain the evil habit, as he does not voluntarily remove the occasion when he can; therefore, in such a case, God helps the one with the bad habit more, and therefore, more than from the delay of absolution, one can hope for improvement from the grace of the sacrament, which will make him stronger, and will make the means he uses to eradicate the habit more effective. For why do Salmantines (2) rightly say that more should be hoped from the delay of absolution for a sinner who lacks grace than from the absolution given to a friend of God who receives grace? And the Car-

dinal of Toledo (3), speaking precisely of the sin of pollution, believes that there is no more effective remedy for avoiding this vice than to frequently avail oneself of the sacrament of penance; and he adds that this sacrament is the greatest restraint for those who commit this sin; and that those who do not use it, he says, should not promise themselves amendment except by a miracle. And in fact, St. Philip Neri (4), as is read in his life, made frequent use of this means of frequent confession for those who relapsed in this vice. This is also supported by what is said in the Roman Ritual, when dealing with penance: "It is most useful for those who are easily prone to relapse to be encouraged to confess frequently; and, if it is advisable, to receive Holy Communion." And by saying "easily prone to relapse," it certainly means those who have not yet eradicated the wicked habit. Some authors who seem to want to save souls solely through the path of rigor, say that recidivists become worse when they are absolved before they are reformed. But I would like to know from these masters of mine, whether all recidivists, when dismissed without absolution, lacking the grace of the sacrament, become stronger, and whether they are all reformed? How many miserable people I have known in the exercise of missions, who, dismissed without absolution, have abandoned themselves to vices and despair, and through many... (r) Book 6, no. 463, v. As above. — (2) De pæn., chap. 5, end. — (3) Tol., chap. 6, no. 2. — (4) chap. 6, no. 2.

[*Latin ed. p. 691*]

ON HABITUAL SINS AND RELAPSES. 679. Many years have passed without confession! Moreover, I repeat: each person must conduct themselves according to the light given to them by God. It is certain that in this matter, those who are too lenient are more mistaken than those who are strict. Indeed, excessive leniency is the cause by which so many souls are lost (and it cannot be denied that these are in greater number, and cause greater damage, since they add to the number of habitual sinners); but others, through excessive rigor, are also greatly detrimental to the salvation of souls. And I do not know whether a confessor should only be concerned with causing scruples when absolving those who are disposed, and not also when dismissing those who are disposed without absolution. I conclude here, and say: I do not deny that, at times, delaying absolution can be beneficial to a disposed relapsed person. Secondly, it is always beneficial that a confessor should frighten such relapsed persons, and show that he cannot absolve them. Thirdly, ordinarily speaking, for relapsed persons due to intrinsic weakness, and who present an extraordinary sign of repentance, the benefit of absolution is greater than that of delay. Oh, that confessors would absolve relapsed persons only when they present extraordinary signs! It is a lamentable fact that the majority, if not the vast majority, of confessors universally absolve relapsed persons without distinction, without any extraordinary sign, without any warning, and without offering any

remedy for amendment; and from this, truly, proceeds the universal ruin of so many souls, not just from absolving the disposed, but also from the indiscriminate absolution of the habitually sinful. 16. However, what has been said, generally speaking, about habitual sinners and relapses, does not apply in the same way to those who are habitually in a state of grace but are entering the sacred orders, especially if they are in a grave sin. For them, a different principle applies. A layperson habitually in a state of grace can be absolved whenever he is disposed to receive the sacrament of penance; but a candidate for ordination who is habitually in a state of grace, if he wishes to ascend to the sacred order, it is not enough that he be disposed to receive the sacrament of penance; but he must also be disposed to receive the sacrament of orders; otherwise, he will not be disposed for either. For he is unworthy to ascend to the altar if he scarcely escapes the state of sin, and does not have positive virtue, which is necessary with respect to the sublimity of the state into which he is being admitted; he sins gravely if he wishes to receive the sacred order without it, even if he is in the state of grace. Therefore, in such a case, the confessor cannot absolve him unless he promises to abstain from receiving the order to which he cannot ascend until, after a long period, at least several months of probation. This has been fully demonstrated in the dissertation included in this work (1), and is in accordance with the common opinion of the doctors (2) mentioned there, who teach that for receiving the sacred order, common goodness, that is, simple freedom from mortal sin, is not sufficient; but a special goodness is required, by virtue of which the one being ordained is cleansed from bad habits, as taught by St. Thomas (3): "The sacred orders require sanctity; therefore, the weight of the orders must be imposed on those who are already dried up by sanctity, that is, freed from the moisture of vices." And the reason is that if the one being ordained does not have this special sanctity, he is unworthy to be placed over the people, to exercise the highest ministries of the altar. "Just as those who receive the order are placed over the people by the degree of the order, so too they must be meritorious in sanctity (4)." And elsewhere (5) he expresses: (1) Book 6, no. 63. (2) Ibid., no. 68, v. Si igitur. (3) 2nd Part, 2nd Question, 289, article 1, ad 3. (4) Supplement, Question 55, article 1, ad 5. (5) 2nd Part, 2nd Question, 184, article 8.

[*Latin ed. p. 692*]

680 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. This is confirmed by the aforementioned reasoning, which states: "Because, through the sacred order," one is appointed to the most worthy ministries, by which Christ is served "in the sacrament of the altar, for which a greater interior sanctity is required than is required even in the state of religious life." 17. — However, the case is made an exception when someone is given by God such extraordinary compunction, which frees him from his

former frailty; for, as the Angelic Doctor (1) says: "Sometimes God so moves the heart of a man, that he suddenly and perfectly attains spiritual sanctity." Such conversions are indeed rare, and especially in those being ordained, even if they seek a religious house to practice spiritual exercises; for these, for the most part, come not willingly but are compelled; but when someone truly receives such grace from God (whose mercies are wonderful), which transforms him so that, although he may still feel some evil inclination, he conceives a great horror of sin, and at the same time clearly perceives a notable diminution in his desire, so that, fortified by grace, he can easily begin to resist temptations; and moreover, he firmly resolves not only to avoid sins and occasions, but also to embrace more suitable opportunities to live as befits a priest, and he has already begun to pour forth fervent prayers for his perseverance, with great and such confidence in God, which makes him morally secure about a certain great change in his life: in such a case, it is permissible for the confessor to absolve him, and if he wishes, to receive the sacred order immediately after confession. Nevertheless, even in such a case, when the penitent has great compunction, the confessor should, as much as possible, try to persuade him to postpone the reception of the order, so that he may better cleanse himself of evil habits and better carry out the intentions he has conceived. Indeed, for this purpose, if he is unwilling to postpone the reception, the confessor, like a physician, may even postpone absolution itself, for his greater benefit, so that he may postpone the initiation of the reception of the order. However, this must be understood, so that through such a delay, he does not incur the danger of any infamy or stigma; for then (as noted in n. 4), the penitent has the right to be absolved immediately. Furthermore, confessors should be as strict as possible in absolving such candidates for ordination, who afterwards often turn out to be the worst, and thus cause great harm to the people and the Church (2). I find this reasoning of mine fully endorsed by Benedict XIV, in his celebrated work on the Synod (l. 11, c. 2 and 3) of the latest edition.

POINT III. ON CERTAIN SPECIAL QUESTIONS TO BE ASKED BY CONFESSORS TO PENITENTS WITH A LITTLE SCRUPULOUS CONSCIENCE.

I. On questions to be asked about the basics.

18. — It has already been said in treatise 16, n. 102, that although the examination of conscience is the duty of the penitent, nevertheless, if the confessor has reason to believe that the penitent has not sufficiently examined himself, he is obliged to question him. And speaking of the basics, it was also said there in n. 103, that it is an error to dismiss them to examine themselves more diligently; but (1) 3. p. q 86. a. 5. ad r. — (2) Lib. 6. ex n.

69.

[*Latin ed. p. 693*]

Regarding the examination of the uninstructed: 681. Confessors should examine the uninstructed, questioning them according to the order of the commandments of the Decalogue, but not about all the sins they may have committed, but only about the more common ones that are usually committed by such people; especially if they are laborers, coachmen, soldiers, servants, farmhands, shopkeepers, and the like.

Regarding the first commandment, the confessor will ask the penitent: 1. Whether they have been instructed in matters of faith, according to what we said in section 4, paragraph 3. But here, the celebrated and learned missionary, Father Leonard of Port Maurice, wisely points out in his *Mystical and Moral Discourse*, number 26, that confessors should instruct the uninstructed in the mysteries of the faith, at least in the four principal ones. Therefore, he adds: "It is not good to dismiss the uninstructed with a simple absolution, so that others may teach them, because no other fruit is expected, except that they remain ignorant. Therefore, it is expedient to briefly teach them these principal mysteries, and also to encourage them to perform acts of faith, hope, charity, and contrition, obliging them, however, to take care to be perfectly instructed in the future about the other mysteries and the necessary knowledge of the precepts."

And the same author, speaking of those who neglect their own salvation and who would be greatly ashamed and offended to be questioned about it, says that it is fitting for the confessor to say to them: "Come now, let us together elicit Christian acts; say, say with me: 'My God, because you are infallible truth, and because you have revealed the sacred Church to me, I believe whatever the sacred Church teaches me to believe; I believe especially that you are one God, and three persons; I believe that the Son, when he was God, made himself man, died on the cross, rose again, and ascended into heaven; and from there he will come to judge all, so that the good may enjoy the glory of paradise, and the wicked may be tormented in eternal fire.'"

It should also be noted that Benedict XIV, in constitution 42 (on the Doctrine of Christ, § 12, see Bullarium, vol. 1), says that absolution should be denied to one who culpably neglects to learn the necessary knowledge, either by necessity of the means or by necessity of the precept. But regarding the precepts, it is possible to absolve the penitent if they sincerely promise to try to learn, with these words: "In such a case, the penitent can be absolved, if they acknowledge themselves to be guilty of this ignorance, and promise to diligently apply themselves to learn the necessary knowledge of the precepts."

2. Whether they have practiced superstitions, or taught others, and if they have used the services of others, who have led them to sin. Therefore,

the uninstructed should be warned that superstitions are never permissible, even if they are done out of charity or necessity. What actions are, and are not, superstitions? See in the work (1).

3. Whether they have ever, out of shame, concealed any sin in confession? And with this question, the confessor should especially take care to inquire of the uninstructed, and of young women, who rarely attend the sacraments, saying to them: "Perhaps some scruple from your past life is troubling you? Take care now to confess well; say everything freely, do not be afraid, cast all scruples from your mind, etc." With this question, a certain diligent worker freed many souls from sacrilegious confessions. If, however, he finds that such sacrileges have been committed, in order to be certain of the number, he will ask how many times, within this time since they ceased to sin, they have confessed and received communion; and if, whenever they confessed or received communion, they were aware of sacrilege? It sometimes happens that some confess sacrileges, especially in childhood, and (1) Book 3, from number 17.

[*Latin ed. p. 694*]

682. TRACTATE. ULTIMATE. HOW ONE SHOULD BE EXAMINED, etc. Afterward, one must forget these things; for those who are examined are not obligated to repeat confessions made in a state of forgetfulness. Furthermore, one should ask whether they knew that, through such confessions and Communions, they had transgressed the Paschal precept. However, it is fitting that this inquiry regarding sacrileges be made at the beginning of confession, so that, if it is made afterward, and a sacrilege is found to have already been committed, time will not be wasted repeating a confession that may be no different from previous ones. It is necessary, however, to endeavor to make those who have concealed their sins realize how grave a sin it is to trample underfoot the blood of Jesus Christ. 4. One should ask if satisfaction for penance has been made? And if it has been omitted, whether this occurred because of forgetfulness, or because one was unwilling to fulfill it, or because one postponed doing it; or whether, in that delay, one thought that one was sinning? 5. Regarding scandals, if one has led others to sin, or if one has been an instrument for others to commit sin? If one has cooperated in the sins of others? One should question the sacristans whether they have served wine to those who are accustomed to becoming intoxicated (1). One should question women whether, through words that are not entirely virtuous, through jests, dances, laughter, or by gazing fixedly at someone, or by wearing a dress that is too revealing or with an open neckline, they have incited men to evil thoughts? Whether they have accepted gifts from others that were given for a wicked purpose? 19. — Regarding the Second Precept. One should ask: 1. Whether one has transgressed any vow? 2. Whether one has sworn falsely? And whether one has sworn by the saints, or by sacred things, or by the soul, by conscience,

or by faith? 3. Whether one has blasphemed, and what was said; whether one has said "may he be cursed" (commonly "managgia") or "atta, potta"? And against whom did one blaspheme, against the saints, against holy days, or against sacred things? And if one added, "If I have done so"? Also, if one has blasphemed in the presence of children, servants, etc., because in that case the sin of scandal is added; see regarding blasphemy what was said in treatise 5, number 1 and following. But it must be noted that, according to the Instruction for confessors, blasphemers are not excused from a grave sin simply because a wicked disposition or a violent fit of anger caused them not to realize, or not to perceive, what they were saying; for those who are wickedly disposed, although they may have less clear awareness than others, always have an actual awareness that is sufficient to make the act deliberate and mortal. For when they commit a small sin, the same sensitive stimulus is not felt in their minds that would be felt by one whose conscience is not so depraved; and therefore it happens that in their memory there remains not even a trace of the actual awareness that they had of the sin, or that trace is so slight that, when questioned, they are willing to say that they did not notice. But a prudent confessor should not give them credence; nor should one inquire whether or not they noticed, but all blasphemies should always be accepted as actual, and it should be understood that they knew they were such (2). 20. — Regarding the Third Precept. With regard to the obligation to hear the sacred sermons on holy days, one should ask the penitent: 1. Whether one has omitted the sacred sermons several times? And whether one noticed the omission? Or whether one doubted whether it was the time when one could have heard the sermon? For often a penitent, postponing hearing the sermon to a late hour, finds that the sermon has ended, and that it was no longer possible to hear it, yet, without a just cause, one has put oneself in danger of omitting it, and this is a fault. (1) See practice of confessors, volume 8, chapter 2, number 21 and following. — (2) Ibid., number 27 and following, and 1, 5, number 127. See the note.

[*Latin ed. p. 695*]

REGARDING QUESTIONS TO BE ASKED OF THOSE MAKING THEIR FIRST CONFESSION. 683. They do not accuse themselves. 2. Ask if they have worked on a feast day? And if they affirm this, ask how long they worked, and what kind of work they performed? For, according to the more common opinion of doctors, those who work for more than two hours are excused from grave sin; indeed, some allow even more, at least if the work is light, or if there is some other noteworthy reason. If, however, the penitent confesses that they have sometimes worked more, and sometimes less, ask how often they worked, judging whether the work was in a serious matter? But it is necessary to teach them that working for a long time, even secretly, for comfort, and without necessity, is also a sin. 3. Ask why they worked,

whether it was due to the custom of the region, or out of necessity, or by order of their father, husband, or master?

21. – Concerning the Fourth Commandment. If children confess, ask them: 1. If they have obeyed their parents; because in this case, they have committed a double sin, namely, against charity and against piety. 2. If they have done something serious against their parents' express command, and in a just matter, such as not leaving the house at night, not playing harmful games, not associating with bad companions, or with persons of the opposite sex, and similar things. I said "in a just matter"; because children are not obligated to obey their parents in matters concerning the choice of their state in life. Indeed, parents would sin gravely if, without just cause, they forced their children into the married state, or into the ecclesiastical or religious state; or if they unjustly prevented them from entering the religious state that they wished to choose. 3. Ask if they have shown disrespect towards their parents, through actions, words, or serious insults uttered in their presence, such as calling them drunkards, beasts, fools, thieves, sorcerers, or scoundrels; or by expressing their contempt through gestures, or by uttering other words that caused them great distress. However, calling them "old," "ignorant," or "stupid," should not absolutely be condemned as a mortal sin, unless they are gravely offended by it. Note that when children have not given their parents due respect, they are obligated to restore the honor they have taken away, by asking forgiveness from them, even before those in whose presence the children have sinned. Some confessors, however, are too hasty in this case, and impose on the children as a penance that, when they return home, they kiss their parents' feet, and then absolve them; but they afterwards do not take care to fulfill this, and commit a new sin. It is better to ensure that they ask for this forgiveness before absolution is given, rather than imposing it upon them as an obligation to kiss their parents' feet; because those children to whom this custom has never been practiced will find it very difficult to do. If, however, it is not convenient to demand this action from them in order to ask for forgiveness before absolution, it should not be imposed as a grave obligation, but rather, it should be suggested as a good idea, since it is certainly presumed that the parents will, at least most of the time, forgive their children this obligation, so that the children do not offend God again.

22. – If, on the contrary, the parents confess, ask them: 1. If they have been negligent in the upbringing of their children, in not ensuring that they are taught Christian doctrine, that they attend Mass, that they receive the sacraments, that they avoid bad companions and persons of the opposite sex. Also, ask them if they have been a scandal to their children, by blaspheming in their presence, etc. If they have not corrected their children for their excesses, and especially if they have stolen something; if they have allowed the fiancé of their daughter to enter their home, and especially if they have kept their children with them in the same bed, or if they have

allowed boys and girls to sleep together? Also, if they have failed to provide their children with necessary food;

[*Latin ed. p. 696*]

684 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. If children are forced by unjust means to enter into marriage, or to receive the sacraments, or to enter a religious order against their will, those who do so sin gravely. But many parents feel no scruple about this, and thus ruin ensues for their children, and great harm to the Church.

Also, let the examiners ask masters, if they have chastised their servants when they blasphemed, or did not observe the Paschal precept, or did not attend Mass, or spoke dishonestly, especially during the harvest and grape-picking seasons? For masters are bound to prevent scandals that occur at those times when they are able to do so.

Let them also ask men if they have provided for their families? And wives, if they have provoked their husbands to blasphemy, and if they have defrauded them of their marital due? Often, wives are questioned about this, and for this reason alone they are condemned, and it is the cause why even husbands are condemned, who, when they are denied what is due to them, fall into a thousand crimes.

Nevertheless, in this questioning, let them use the most modest words possible, e.g., "Do you obey your husband even in matters pertaining to marriage? Or, "Do you perhaps have some scruples that trouble you concerning marriage?" But this question should be omitted as much as possible when questioning wives who profess a spiritual life.

23.—Concerning the Fifth Precept. Let the penitent be asked if he has desired that a grave harm come to his neighbor through praying against him, or if he has rejoiced in that harm. And it should be noted that if someone has wished various evils for his enemy, e.g., death, disgrace, poverty, etc., he is bound to declare everything, and these are distinct sins in number, if he intended to effectively inflict those evils upon him, or if he specifically and in particular wished that these things should happen to him. Otherwise, as many doctors probably say, if he wished those evils under one general evil, namely, as a means to the ruin desired for the enemy. And here is the confusion of confessors, in discerning whether imprecations, which are often customary among the uneducated, are mortal sins or venial sins. In this, it is necessary to ask the penitent first, whether in that act he deliberately desired that those things should come to pass? But this is not sufficient for making a certain judgment; therefore, it is necessary to ask afterwards, whether he cursed against strangers, or against relatives; because in the latter (especially against children, spouses, or parents), a wicked intention is rarely present. Finally, it is necessary to ask about the reason why he uttered those imprecations; for if a grave cause, or a fervent anger, intervened, it is then easy to see that a wicked desire was also present.

Furthermore, it is not sufficient for the penitent to excuse the imprecations (as Cajetan observes) by saying that he only wished that they would happen in that act; for this is already sufficient to have committed a grave fault in that act; therefore, the confessor then inquires about the number and judges them at least as they are before God; and he who is found to be a recidivist in that vice should not be absolved, unless he first repents, or gives a sign of extraordinary sorrow.

Ask 2. if he has inflicted grave injuries on his neighbor, and whether in the presence of others; because then he is bound to restore the honor taken away from him before those very people, by asking forgiveness from him, or by other signs of reverence; unless it can be prudently presumed that he has made amends for everything; or that he refuses that public satisfaction, lest shame arise in himself, and the memory of the injury received be renewed in others; or unless it is feared that that act of satisfaction would again stir up hatred. But if the injury inflicted was secret, he is also bound to ask forgiveness in secret, according to.

[*Latin ed. p. 697*]

ON ASKING QUESTIONS OF THE UNLETTERED. 685: the true sentiment; however, it must be noted that the injuries, by which the unlettered burden one another, although grave in themselves, are not always grave among these kinds of people, as when they call each other thieves, sorcerers, or prostitutes; because they themselves do not often do these things, nor do those who hear them give credence; unless they name specific things and accomplices. Question 3: whether he has stirred up discord, by spreading dissension and reporting to one what he heard from another. Furthermore, if the confessor knows that the penitent has been the cause of some injury, he should ask whether the injured party has demanded that the injury be forgiven? See the statements in treatise 4, no. 17. It must be noted here what Tournhem says (vol. 3, page 269), namely, that the injured party can rightly desire satisfaction for the injury, if otherwise the family would remain marked by infamy. Also, St. Thomas (1) notes that the injured party can justly demand a reprimand, either to curb his audacity, or for the sake of the common good. "But if," he says, "the intention of the one seeking redress is primarily for some honor through the punishment of the sinner (for example, for amendment, or to restrain him, and for the peace of others, and for the preservation of justice), then such redress can be lawful." But regarding the point of preserving justice (which is often proclaimed by the injured party), great vigilance must be exercised by the confessor, because, as has been said in the passage cited, in that desire for justice, one's own vengeance is easily hidden. Finally, regarding the 5th precept, the unlettered are asked whether they have become intoxicated to the point of losing the use of reason? See the statements in treatise 8, no. 4. 24. - Regarding the 6th and 9th precepts. 1. They are asked about their

thoughts, whether they have desired, or have been stubbornly delighted in, dishonest things; and whether they have fully considered them and consented to them. Then, whether they have lusted after girls, or widows, or married women; and what evil they intended to do with them. In this, it must be noted that, generally speaking, the unlettered consider rape to be a greater sin than simple fornication; on the contrary, they are unaware of the wickedness of adultery. Therefore, with those who are accustomed to this vice, it is not advisable to warn them about the wickedness of adultery, since it is foreseen that such a warning will be of little use, but will only cause the penitent to sin with a double sin, if he does not resist the lusts of the flesh. Regarding these thoughts, to which the penitents have consented, a certain number should be obtained, if possible; but if not, inquire how many times in a day, or week, or month, they have consented to the thoughts. But if they cannot even explain this, they are asked whether they have lusted after specific women who have come into their sight, or have come to mind; or whether they have habitually thought dishonestly about any particular woman, never resisting such evil thoughts? And whether they have always lusted after her, or only when they saw her? Finally, they are also asked whether they have taken any steps to carry out these evil thoughts; for, as we said in the same treatise 3, no. 43 in end, then those means, although indifferent in themselves, are informed by internal malice, and therefore must be explained as external sins, or begun actions. 25. - II. Regarding obscene words, they are asked: 1. before whom, and how often, have they spoken in this way, out of scandal? Whether before men, or women, married or unmarried? children or adults? It is easier to scandalize girls and boys than adults, especially those who are accustomed to this vice. 2. What words have they said? For example, have they named the genitals of their respective sexes? For this (1) 2. 2. q. 108. a. 1.

[*Latin ed. p. 698*]

686. TRACTATE. ON HOW ONE SHOULD BEHAVE, etc. It is difficult to excuse a mortal sin. 3. Did they utter the words out of anger, or in jest? For it is more difficult to find compliance and avoid scandal when words are spoken out of anger. The confessor should be cautious about absolving those who have repeatedly committed such sins in indecent conversations, even if they claim to have said them in jest, unless they first make amends or show extraordinary signs of repentance. 4. Did they boast about some sin? For in such cases, three sins often occur together: a great scandal to those who hear, boasting about the evil committed, and complacency in recounting the sin. Therefore, they should be asked about the specific sin they boasted about. They should also be asked if they were pleased to hear others speaking dishonestly, and if they then considered the precept of correction, thinking that it would be beneficial. 26. Regarding actions, with whom did they have relations? Have they committed the same sin

with others? Where was the sin committed (in order to remove the occasions)? How many times was the sin consummated, and how many acts were interrupted, separately from the sin itself? Did they sin for a long time beforehand? For then, internal acts are interrupted, as stated in the cited passage, treatise 3, no. 58. In such cases, it is appropriate to form a judgment that the sins have been multiplied as many times as there have been moral temptations, distractions, etc., as they are before God, simply by asking about the duration of time spent in sin. Conversely, if the evil act was conceived two or three days before the consummation of the sin, and was not retracted during that time, then it is counted as one sin; see the statements in the same place. 27. Those who have committed sins of impurity should also be asked about indecent touches separate from the acts of impurity, and they should be warned that these are mortal sins. They should also be asked if they desired, or if they were pleased, with the thought of intercourse with a woman, or several women, or girls? For then, they commit distinct sins. Also, note that if someone were to lie with a woman between her legs or arms, in addition to the sin against nature, they would commit an initiated, or affective, act of fornication, as commonly stated by Fill., Tamb., Holzm., Spor., etc.; thus, here two sins of different kinds are committed, one against nature in effect, and the other of fornication in affection. Regarding sins committed by spouses with respect to the marital debt, ordinarily speaking, the confessor is not obliged, nor is it fitting, to ask the wives whether they have fulfilled it, except in a more modest way, such as whether they have been obedient to their husbands in all things; they should remain silent about other matters, unless they are asked. What is permitted and what is forbidden between spouses regarding this same duty, see what has been extensively stated in treatise 18, from no. 39. 28. Regarding the Seventh Commandment. Ask if they have stolen anything from another? And from whom, and whether from one person or from several? And whether once, or several times? Whether alone, or with others? And whether the owners were rich or poor? So that it may be determined whether the matter was serious or trivial; see treatise 10, from no. 42 to 73. 29. Regarding the Eighth Commandment. 4. The penitent is asked if they have slandered anyone? And if so, whether they did so by falsely accusing them of a crime, or by revealing a true fault? And if the crime is true, whether it was hidden, or whether it was made public in some place, by reputation or by the judgment of a judge? Also, if it was hidden, whether they revealed it to someone who was unaware? And before how many did they recount it? Also, whether they recounted it as certain, or as something they had heard from other slanderers? And whether they added to it? Or, at least, whether they were pleased to hear the slanders? Furthermore, they should be asked if they have committed any other evil

that leads to slander.

[*Latin ed. p. 699*]

DE THE QUESTIONS TO BE ASKED, etc. 687 Has he reproached anyone in the presence of others? For then, there is also present contempt, which is distinct from detraction. How a confessor should act concerning the compensation for reputation and honor, see the cited passages, treatise 11, nos. 3, 4, 18 and following. Regarding this eighth commandment, it is not always necessary to ask the penitent whether he has rashly judged? For such judgments, which are commonly made, rarely amount to grave sin, since they are often not judgments but suspicions; and even if a judgment is made, it occurs either because there is sufficient reason to judge in that way, or at least because he believes that there is a sufficient reason to form such a judgment. Indeed, sometimes it is necessary to remove some unlearned individuals from error, who create scruples for themselves by suspecting where they are required to suspect, so that they may avoid what they can prevent; for example, some mothers are troubled when their daughters are overly familiar with betrothed men or even with other men; likewise, some men are troubled when they are overly familiar with other women. These sometimes confess that they have rashly judged, or that they have been suspicious. Confessors should admonish these, so that they do not create scruples for themselves about this in the future; rather, they should say that they are required to suspect in such cases that some evil may result, and therefore they are required to remove opportunities and to prohibit such familiarity. 30. — Regarding the precepts of the Church, nothing else occurs to be asked, except whether they have fasted during Lent and the vigils? If they are considered to be bound by this, and whether, during those times, or on Fridays and Saturdays, they have used forbidden foods. II. Of the questions to be asked with persons of diverse status, or condition, who are somewhat careless in conscience. 31. — Here it is noted that, concerning the obligations of one's own status, or office, it is not always sufficient for the confessor to simply ask the penitent whether he has fulfilled his obligation? When the penitent appears to be somewhat careless in conscience, or the confessor has a reasonable suspicion that he is neglecting his obligations, then it is necessary to ask him in particular, at least about his principal obligations. And first, if he is a priest who comes to be confessed, he is asked 1. Whether he has fulfilled the canonical hours and the obligations of Mass, or whether he has delayed celebrating them for a long time? 2. Whether he has practiced his profession? 3. Whether he has dismissed Mass too hastily (regarding which, note what has been said in treatise 15, nos. 84, 85 and 86.)? If he is a beneficiary, he is asked about the fruits of the benefice, how he has used them? If he is a confessor, he is especially asked whether he has absolved those who are in proximate occasion of sin before they have removed it? Or recidivants without extraordinary signs. If he is

a parish priest, he is asked about the particular duties of his office, as has been said in treatise 7, from no. 14. But especially 1. Whether he attends to the due corrections of his subjects? Specifically, towards those who are held in hatred, or who behave scandalously, or who frequent the houses of betrothed couples? 2. Whether he takes care that his subjects, without exception of persons, have fulfilled the Paschal precept, by inquiring of them, without favoritism, about their Easter duties. 3. What diligence he has given to preaching on Sundays, or to teaching Christian doctrine, and to administering the sacraments, especially to the dying? 4. He is asked whether he attends to the ordination of

[*Latin ed. p. 700*]

688 TRACT. LAST. HOW ONE SHOULD BEHAVE, ETC. Whether they have demonstrated faith through good morals or through frequent reception of the sacraments, and whether they have given certain assurances of this. Finally, if a bishop were to appear, and it were known that he neglected his conscience, the confessor must not fail to question him about his particular duties, of which we spoke in the same treatise, section 7, number 47. And especially, he should ask whether he exercises due diligence to ensure that he is sufficiently learned and possesses positive probity in ordaining (as we said in treatise 7, numbers 47 and 52), not simply relying on the testimonies of parish priests, which are most often false, or suspected of being false, because they are usually given for human reasons. Also, whether he grants the faculty to hear confessions to priests whose doctrine and moral integrity he has not fully examined; otherwise, he will be doing more harm than good. Also, whether he investigates scandals that exist in the diocese. Also, how he conducts himself in visitation. 32. — II. If a nun confesses, she should be asked: 1. Whether she has committed any fault concerning her vows, especially of poverty, by receiving or giving anything without permission? 2. Whether she has fulfilled her canonical hours? For the opinion that nuns are not required to recite the office in private is not sufficiently probable, as we have shown (1). 3. Whether she has fostered any undue affection for anyone? And in that case, if the nun is unwilling to abandon this familiarity, the confessor must be firm in denying her absolution; for in such familiarities, although the end may not be positively wicked, there is always danger; at least there is scandal, and a bad example with respect to others. 4. Whether she harbors any hatred towards her sisters. 5. If a nun performs any office, she should be questioned about it in particular; for example, a gatekeeper (Rotariæ), whether she brings letters or news that are suspected of being harmful. A porter (Portinariæ), whether she leaves the gate open carelessly, with the danger of scandal to the nuns or others? An abbess, whether she exercises due diligence when men enter or stay in the monastery, or whether she connives at new abuses? Noting that although individual nuns may sin lightly by transgressing a minor rule, superiors

who do not care to prevent it, and who can grant dispensations, sin in a serious matter. 33. — III. If a judge appears, he should be asked: 1. Whether he has been a respecter of persons? 2. Whether he has expedited cases? 3. Whether, in judging, he has shown due diligence, or has he neglected it, or has he uttered judgments influenced by some feeling towards one of the parties? IV. If a scribe (tabellio) appears, he should be asked: 1. How he behaves in taking depositions? 2. Whether he has omitted suggestive questions? 3. Whether he has diminished or increased the testimonies of witnesses? V. If a physician appears, he should be asked: 1. Whether he has been sufficiently versed in the study of medicine and in the practice of healing? Also, whether he applies himself (as he is bound to do) in more difficult cases that arise; 2. Whether he has granted permission to eat meat to someone for a purely human reason, without a just cause? 3. Whether he has applied any dangerous remedy to a sick person who is not yet considered to be dying? 4. Whether he has been the cause of remedies being obtained from a certain pharmacist friend, whom he knows to be somewhat unreliable, or inexperienced, or who sells ineffective medicines? 5. Whether he attends to the care of the poor, if he receives a fee for it; or without a fee, if the poor are in great need? 6. Whether he advises his sick patients to receive the sacraments at the proper time (p) Book 4, numbers 141 and 142, and in the practice of confession, volume 8, section 3, number 64.

[*Latin ed. p. 701*]

ON THE QUESTIONS TO BE PUT, ETC. 639, whether they would confess, according to pontifical precepts? We have spoken of this point in several parts of this work (1), where it is stated that Innocent III ordered physicians not to care for any sick person unless he had first confessed; and St. Pius V, confirming this precept, furthermore ordered that the physician should leave the sick person after the third day, unless he knew that he had confessed; he also ordered that all physicians, before assuming the degree of doctor, should take an oath to observe this precept, and this was ordered to all colleges. But it is doubtful how such a precept and oath should be understood. Many doctors have held that it applies when the illness is dangerous; or at least when it is doubtful whether it is dangerous, and in this sense they have said that the bull of St. Pius V was received. But the more common opinion is that the aforementioned precept, although it does not obligate in any slight illness, should not be understood to apply only to illnesses that are actually dangerous, but also to those that are prudently judged to be able to become dangerous in the future. The reason is that Innocent commands the physician to urge the sick person to confess before undertaking the burden of his care, so that the sick person (as the Pope says) being reminded of confession in a mortal illness, and despairing of salvation, may more easily fall into the danger of death; therefore, he

intends to ensure that the sick person confesses before the illness becomes mortal. This opinion seems true to me. Nevertheless, contrary to this, is the practice of physicians, even those with a fearful conscience, who do not usually urge the sick to confess unless the illness is probably already dangerous. Nor do they consider that they are sinning against the oath sworn according to the bull of St. Pius V, relying on the teaching of many authors, Nav. Laym. Veg. Graf. Rod. Cier. etc. (2), who believe that the aforementioned oath does not obligate, except for that part for which it has been accepted by custom. However, there is no doubt that at least those physicians sin mortally who omit to urge the sick to confess when the illness is already dangerous. Oh! how miserable it is to see so many sick people (and especially those of high standing) being led to the brink of death, so that they must soon render an account of their lives to God, at a time when they are almost lifeless, when they can scarcely utter words, scarcely hear others, scarcely comprehend the state of their own conscience, and the pain of their sins! And all this happens through the fault of these physicians, who, lest they displease the sick or their relatives, do not inform them of the danger; indeed, they flatter them until they are completely despairing of life. Therefore, when a physician with a negligent conscience arrives, let the confessor especially question and urge him, not casually, but with fervor, about this obligation to inform the sick person of the need to confess; at least when he notices that the illness is already serious, or doubts that it is already serious, as doctors commonly say who do not disagree on this point. I say with fervor, for from this point hangs the spiritual salvation, not only of the penitent physician, but also of all the sick people who are under his care. 34. — VI. If a pharmacist is present, he is questioned: 1. whether he has provided remedies to pregnant women to procure an abortion; 2. whether he has sold one medicine for another, and at a higher price than it was worth. Here, add Gregory XIII in the constitution 29.

[*Latin ed. p. 702*]

690 TRACTATE. ON HOW ONE SHOULD BEHAVE, ETC. It is forbidden to form associations between pharmacists and physicians, or surgeons. VII. If a merchant comes forward, he will be questioned: 1. Has he cheated in weight or measure? 2. Has he sold goods at a price exceeding the maximum, especially when granting credit to buyers who are secure, and he himself would suffer no loss? Can the price be increased when selling on credit, given that such a price is customary in credit transactions, according to common estimation? And can goods sold in small quantities be sold more expensively? Observe the doctrines noted in treatise 10, numbers 174 and 178, with Less, Lugo, Salm., etc. VIII. If a tailor comes forward, he will be questioned: 1. Has he worked on holidays for a significant period without an extraordinary reason, in order to complete garments and

deliver them to his employers? 2. Has he fulfilled the precepts of fasting prescribed by the Church? For tailors are not exempt from fasting due to the labor of tailoring. 3. Has he, if others entrust him with the purchase of cloth, demanded a higher price, under the pretext that a merchant, due to a special friendship, gave him the cloth at a lower price? If that portion of the price was truly given as a gift, then he may demand it, provided he has shown due diligence in obtaining the best price from other merchants, or he knows for certain that others commonly sell that cloth at a higher price; however, he may not demand anything more than what he paid, see treatise 10, number 189. 4. Has he retained scraps or remnants of garments that he unjustly keeps, unless there is the consent of the owners, or unless they have unjustly deducted something from the price due, which is commonly considered fair? 5. Has he had an opportunity to sin by taking measurements of women's bodies to make clothing (commonly called "taking the measure"), or by fitting women's garments, which cannot be done without the presence of the women themselves: and would this be an opportunity for the tailor to fall into wicked pleasures or desires, as often happens with men of bad conscience? 35. — IX. If a female seller or prostitute comes forward (understand these to be those who are licensed by their owners to sell goods), she will be questioned: 1. Has she retained any portion of the price collected from buyers? For we maintain that the seller cannot retain anything exceeding what is due to her, even if she delivers to the owner the price designated by him; because such a determination is made so that the goods are not sold for less, but not so that the seller retains what remains for herself; and this holds true even if the owner has designated a place where the goods are to be sold, and the seller, using due diligence in that place, subsequently sold them for a higher price in another location; nevertheless, we say that she cannot retain everything that remains, but only what she can reasonably expect due to the extraordinary effort involved; for the goods always benefit the owner. Exceptions: 1. If the seller made the item better, and therefore sold it for more than it was originally worth; 2. If the seller has agreed with the owner not to deliver more than the price determined by him; and this may be expressly or tacitly agreed, as if the owner had not assigned any payment for her labor; 3. If what remains is of little value, so that it may be presumed that the owner would condone it; 4. If the seller, after using ordinary diligence, bought the item herself at a price lower than others offered, and then sold it for a higher price. The same applies if someone entrusts you with the purchase of an item at a specified price, and you buy it for less; in that case, you may not demand anything more than what you paid, unless you have performed extraordinary labor.

[*Latin ed. p. 703*]

HOW TO DEAL WITH CHILDREN, etc. 691. If you have used a child to economize on expenses, or if you have purchased something in your own

name, taking the risk upon yourself, this is understood, provided that you have already exercised due moral diligence, and have not found anyone from whom you could have purchased the item at a lower price. 36. – X. If a barber is present, he should be asked whether he cuts hair on holidays, and whether such a custom exists. However, if it is not forbidden to him, where such a custom has already been established; or if men cannot be shaved except on holidays, because on other days they must devote themselves to work in order to support themselves and their families. Furthermore, he should be asked whether he styles women's hair, according to the wicked practice invented by Satan in this time. Ordinarily speaking, I believe that this is the closest opportunity for men to sin mortally with shameful pleasures, or at least with desires; therefore, I say that it should not be permitted to anyone who has not had the contrary experience within himself. If, however, someone has, for a considerable time, experienced himself to be free from sin in such an action, he cannot be condemned for mortal sin; but even so, the confessor should, as much as possible, remove him from such a profession, which certainly contains a danger. I will not delve into the question of whether or not women can, with a clear conscience, ask men to style their hair. I hear that in many places, they do so, and they confess and receive Communion; let them and their confessors consider this. At the very least, the confessor should instruct them not to use the services of any man who has acted maliciously towards them through his actions. Furthermore, I believe that women of purer conscience should not use the services of men, but should be content to be served by women, from whom their hair can be styled in the best possible way.

POINT IV. HOW TO DEAL WITH CHILDREN, ADOLESCENTS, AND YOUNG WOMEN. 37. One should deal with children with all charity and the gentlest manner possible, as much as can be. First, one should ask them whether they know the truths of the faith? And if they do not know, it is necessary to instruct them patiently at that time, if the opportunity arises, or to send them to someone else, so that they may at least be instructed in the things necessary for salvation. When dealing with confession, one should first ensure that the children confess their sins from themselves; and then the following questions can be asked: 1. Have they concealed any sin out of shame? 2. Have they blasphemed against the saints, or holy days, or have they sworn falsely? 3. Have they neglected to attend Mass on holidays, or have they been inattentive while listening to it, or have they worked on holidays? 4. Have they been disobedient to their parents, or have they shown disrespect towards them by rebuking them, raising their hands against them, or speaking harsh words or curses in their presence? And here it should be noted what was said in n. 21, regarding the manner of asking children to ask for forgiveness from their parents. 5. Have they committed any shameful sin? But in this matter, the confessor must be very careful in asking questions: he should begin by asking from a distance and

with general terms: and first, whether they have said bad words? whether they have joked with other boys or girls? And whether they have engaged in those jokes in secret? Then, he should ask whether they have committed any shameful acts. Often, even if the children deny it, it is helpful to use suggestive questions with them, e.g., "And now, tell me, how many times have you done this today? Five times, ten times?" he should ask.

[*Latin ed. p. 704*]

692 TRACT. LAST. HOW TO BEHAVE, etc. When they sleep together, and if they have played with their hands in bed? Question the girls to see if any of them have been pursued by a young man, and whether there have been any thoughts, words, or touches. And from their answers, proceed to further questions. But be careful not to ask girls or boys whether there has been an emission of seed; for it is better to omit this in the material integrity of confession than to be the cause of them understanding things they do not yet know, or being put into a curiosity to learn. Also, ask the boys whether they have brought messages or gifts to women? And ask the girls whether they have received gifts from suspicious people, namely, married people, clergy, or religious. 6. Ask whether they have committed theft, or whether they have caused damage to the property of others, to animals, or in any other way? 7. Whether they have slandered anyone? 8. Regarding the precepts of the Church, ask whether they have fulfilled confession and the Paschal communion? And whether they have eaten meat or dairy products on forbidden days? 38. — As for granting absolution to these children, great attention is required. If it is clear that they no longer have sufficient use of reason, as if they confess clearly, or answer the questions adequately, and it appears that they already understand that they have offended God by sin, and have deserved hell: then, if they seem sufficiently disposed, they should be absolved. But if they are recidivists in mortal sins, they must be treated like adults; therefore, if they do not show extraordinary signs of sorrow, absolution should be postponed. But if there is doubt whether the child has perfect use of reason, as if he is not composed during the act of confession, but turns his eyes around, plays with his hands, or is inattentive, then if he is in danger of death, or is obligated to fulfill the Paschal precept, he should be absolved conditionally, all the more so if he has confessed some mortal doubt. For the sacrament can certainly be administered conditionally when there is a just reason for it, as in this case, to free this child from the state of damnation, if he has ever fallen into it. And this must be done, even if the child is a recidivist: because absolution should be postponed for those who have perfect discretion, because there is hope that from such a delay they will return disposed; but this hope is difficult to have for children who lack perfect use of reason. And it is probable that many doctors say that these children can be absolved conditionally (at least after two or three months), even if they only confess venial sins, so that they

do not long lack the sacramental grace, and perhaps even sanctifying grace, if they happen to have a serious fault hidden from them. It is necessary to take care that these children elicit the necessary act of sorrow to receive absolution, in their own way, for example: "Do you love God, who is your Lord and Master, so great and so good who created you, who died for you, etc.? You have offended this God. He wants to forgive you, and you hope that, for the blood of Jesus Christ, his Son, he will forgive you. But you must repent. What do you say? Do you now repent of having offended him, etc.? Do you know that by these injuries you have inflicted on God, you have deserved hell? Does it please you that you have committed them? My God, I will never offend you again, etc." But penance should be enjoined on these children as lightly as possible, and care should be taken that it is fulfilled by them as soon as possible; otherwise they will either forget it or omit it. The confessor should also strongly encourage the children to be devoted to the Blessed Virgin, and to recite the Rosary daily, and three Hail Marys in the morning and evening, adding this prayer: "My Mother, deliver me from mortal sin."

[*Latin ed. p. 705*]

HOW TO DEAL WITH YOUNG PEOPLE, etc. 693 39. — Regarding the choice of a particular state of life by a young person, the confessor should not presume to determine this for them, but rather, based on the signs, should only suggest the state of life to which he prudently judges the young person to be called by God. Especially when dealing with those who wish to enter religion, the confessor should first carefully consider to which religious order they aspire: for if that institute has ever been laxed, it will be better, in general terms, to choose one that remains in the world; for by joining such a group, they will behave as others do, and the good they previously practiced will easily be neglected in such a religion, as unfortunately happens to many. And the confessor should take great care, if, at the suggestion of relatives, he advises a young person to enter some such community that is lax in its observances. However, if the religious order is one of strict observance, the confessor should carefully examine whether the young person has a true vocation, inquiring whether they have any impediments, such as lack of ability, poor health, or poverty of their parents? And he should especially investigate the ultimate purpose, namely, whether it is truly to unite themselves more closely with God, or to amend past faults, or to avoid the dangers of the world? If the primary purpose is worldly, to lead a more comfortable life, or to free themselves from relatives of harsh character, or to please parents who urge them to do so, he should be careful not to allow them to enter religion; for in such a case, it is not a true vocation, and such an entrance will have a bad outcome. However, if the purpose is good, and there are no impediments, then neither the confessor nor anyone else, as St. Thomas teaches, can or

should, without grave sin, prevent or dissuade them from their vocation; although it may sometimes be prudent to postpone its fulfillment, in order to better test whether their resolution is firm and persevering? Especially if the confessor knows the young person to be fickle, or if the deliberation has taken place during a time of missions or spiritual exercises: for in such circumstances, certain intentions are conceived that, after the initial fervor has passed, may fail. 40. — If a young person wishes to embrace the state of a secular priest, the confessor should not be hasty to agree, without long and proven experience of a right intention and knowledge, or sufficient capacity. Secular priests have the same, indeed a greater, obligation than religious, and they remain in the same dangers of the world; therefore, in order that someone may become a good priest in the world (in which, I say, good men are rarely, if ever, found), it is necessary that they first lead a life that is truly exemplary, far removed from amusements, idleness, and bad companions, and devoted to prayer and frequent reception of the sacraments (but who is this, and we shall praise him?); otherwise, they will place themselves in a state that is almost certain damnation; especially if they do so in order to comply with the wishes of their parents, who seek to increase their domestic affairs. As has already been stated above in nos. 21 and 22, how grave a sin it is for parents to force their children to unwillingly embrace an ecclesiastical or religious state. As for young women who wish to consecrate their virginity to Jesus Christ, the confessor should not allow them to perpetually vow chastity, unless he knows that they are well-founded in virtues, and instructed in the rules of spiritual life, and especially practiced in prayer. At the beginning, he can only allow them to vow chastity for a definite period of time, namely, from one feast day to another. 41. — Finally, with regard to those young people who wish or ought to marry (I say ought, as has been proven in the book, when speaking of those who...)

[*Latin ed. p. 706*]

694 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. If they are incontinent, and do not wish to use other suitable means to restrain themselves), it must be noted that just as the parents sin who, without just cause, prevent them from entering into a legitimate marriage, so too do the children sin (and therefore the confessor is bound to forbid this to them) who wish to enter into marriage with dishonor; or, although the marriage is not improper, they wish to contract it against the will of their parents, and to the scandal of others, without themselves having a just reason for which they can excuse themselves: observe how this is explained in the book. See the statements in tract. 18, no. 16, POINT V. HOW ONE SHOULD BEHAVE WITH DEVOUT PERSONS. 42.—To devout persons, who frequently approach for Holy Communion, one should generally suggest that they at least receive sacramental absolution at least once a week. Such penitents,

if they confess only imperfections that do not certainly amount to mortal sins, Bonaventure says can be absolved under certain conditions; but I do not believe this should be admitted except very rarely, and only when they are unable to provide a clear account of their past life, or do so with great difficulty. Furthermore, I say that if the penitent does not present a clear matter, the confessor should not be angry in seeking it out in order to absolve him; and if, after seeking, he has not found it, he is not obliged to grant him a conditional absolution. This is because the penitent confesses (as I said) about defects, about which there is doubt as to whether they amount to mortal sins. But if he confesses about certain venial sins, but usual ones, or daily ones, such as impatience, intemperance, distractions in work, in prayer, and the like: in order that absolution may be granted to him, it must be considered whether he has ever, as much as possible, exerted himself and overcome his passions; because then his sins can be judged to have arisen rather from human frailty than from a lack of sorrow or intention. Conversely, if he frequently and without resistance falls into such sins, then he should be treated as a recidivist, according to the statements in no. 9 of this tract. 43.—Furthermore, the following should also be noted: 1. The confessor should take care not to forbid his spiritual penitents, especially women, from approaching another confessor; and if he notices that they have done so, he should show that it has been pleasing to him; indeed, he should encourage them to confess to others at times; unless someone is very scrupulous, about whom he prudently fears that, if he goes to another who is ignorant of his conscience, he would be noticeably disturbed. The confessor should also take care not to show that he is anxious to take over the direction of someone's soul. 2. He should never speak of the defects of other confessors without necessity, but rather diligently seek to excuse them for any error they may have committed. 3. He should not undertake the direction of someone who wants to leave his director, unless there is a pressing reason, as taught by St. Philip Neri, St. Francis de Sales, St. Charles Borromeo, and others; for from this often arise distractions, disturbances, and sometimes even scandals. And it should be noted that it is not enough for a penitent to feel some aversion towards his confessor, or to seem to no longer have faith in his words; as St. Teresa says, this is often a temptation of the devil. Therefore, St. Francis de Sales teaches: "A confessor should not be changed without a serious reason."

[*Latin ed. p. 707*]

HOW TO DEAL WITH THE MUTE AND THE DEAF. 695 "But on the other hand, it is not fitting to be inflexible in this matter, if legitimate reasons for change arise." Furthermore, St. Teresa states that a just reason for changing confessors can be the lack of goodness in the confessor; she says: "If a confessor appears inclined to some vanity, he should be changed; for he himself being vain, he will make others vain." Therefore, a just reason for

changing confessors can be a lack of doctrine, but one must have a certain presumption about this. Moreover, St. Teresa says that in cases of doubt, a penitent can rightly consult other learned directors, and sometimes this is absolutely necessary. 4. The confessor should avoid showing partiality towards any penitent. Some are too prone to excessive affection, which involves much care, time, and labor. It is undeniable that some souls sometimes require more assistance than others; but there is a difference between assistance and attachment, which leads to a less careful treatment of other penitents. Therefore, it is advisable that the confessor set aside a specific day or time for those who are in greater need, so that they do not feel neglected. Note 5. When hearing the confessions of these individuals, the confessor must be careful not to raise his voice too much, even when not speaking of sins; for it can happen that others become afraid to confess their sins, fearing that the confessor will speak loudly. 6. It should not be easy to allow devout young women to cut their hair and put on a religious habit; but care should be taken that they first establish firm roots in the spiritual life and in virtues for a long time. Because of this excessive leniency of confessors, how many young women afterwards abandon the habit and enter into marriage, causing scandal in the place, and a bad example to others! 7. The confessor should not allow these young women to be taught to read, and even less to write, by men. How many simple young women have ruined their souls because they learned to read! This is a near occasion of sin, or at least it is not a little dangerous. If they desire to learn such things, they should be taught by some other woman, or by a young brother (still with caution), otherwise, he should not absolve them; nor should he absolve mothers who permit this. 8. He should not allow young women to wander through churches, or to linger in the church longer than is necessary, causing disturbance to their parents; but he should urge them to obey them, and to undertake domestic tasks. How a confessor should be careful about familiarity with his penitents will be discussed in point 10, paragraph 54. We will speak of the direction of souls in Appendix I, Point VI. HOW THE CONFESSOR SHOULD BEHAVE WITH THE MUTE AND THE DEAF. 44. - If a person is both mute and deaf, in order to hear his confession, it is necessary to bring him to a secluded place, and to elicit some sign of his sins and his sorrow, in the best way possible. But before hearing him, the confessor should take care to be instructed by his relatives about his vices, and about the way to understand him and to be understood by him; and when he has perceived some particular sin, along with a sign of sorrow, he should absolve him. But I would always absolve him conditionally, unless I had some moral certainty about his disposition.

[*Latin ed. p. 708*]

696 TRACT. FINAL. HOW ONE SHOULD BEHAVE, etc. 45.—A mute person, if he knew how to write, according to our opinion (1), is obligated

to make his confession in writing: for he who is obligated to an end, is also obligated to the ordinary means. I say "ordinary," because writing would not be an ordinary means for a mute person if he were to undergo a great labor to fulfill his confession, or if there were a danger of his confession being revealed. Now, speaking of the deaf, if a deaf woman, or a deaf person, were ever to approach the confessional, and the confessor, in the course of the confession, were to ask about the circumstances of the confessed sin, and were to notice that she is deaf, see the aforementioned tract, 16, no. 155. POINT VII. HOW ONE SHOULD BEHAVE WITH THE DYING? 46.—The confessor, when receiving the confessions of the dying, should not proceed so strictly regarding the number and circumstances, especially if a priest has already administered the viaticum, or if a doctor is present urging that the viaticum be received quickly; in such a case, it is better to attend to the disposition of the penitent than to the completeness of the confession. It is then sufficient to urge the sick person to repeat the confession when he recovers. And the penance should be the lightest, proportionate to the time he will take to recover: or it will be sufficient to instruct him to return when he is in good health. For those who are wounded and for women in childbirth, who ordinarily cannot be left unattended, it is sufficient for them to accuse themselves generally of their sins, and in particular of some minor fault, with the intention of confessing fully if they recover. The confessor should note that if the dying person is obligated to make some restitution that he is able to fulfill at that time, he should urge him to do so immediately: and it is not sufficient that he leaves this obligation to his heirs, otherwise he should not absolve him. 47.—However, if the sick person were to experience a very significant disturbance of mind upon hearing that he should receive the viaticum, it is probable that the parish priest can administer the Eucharist to him, omitting the usual words: "Receive, brother, the viaticum, etc."; but using the usual words of communion: "May the Body of Our Lord Jesus Christ preserve you, etc." See the aforementioned tract, 15, no. 50. If, then, the confessor were to notice that the dying person is now in a state where he is obligated to receive the Extreme Unction, and he refuses; he should explain to him the great effects of this sacrament, which provides great strength to the soul to resist the temptations of demons in the final struggle: it absolves him from venial sins, and even from mortal sins if they are hidden; and furthermore, it brings health to the body, which is beneficial for the salvation of the soul; but it does not provide this health if the dying person has reached a point where he can no longer recover except by a miracle: because the sacrament only works through the ordinary means, by assisting natural causes. However, if, despite this, the sick person does not consent, and continues to refuse to be anointed, it is very probable that many doctors teach that he is mortally sinning, at least against charity towards himself, since he willingly deprives himself of so much help, in such a need. See

the aforementioned tract, 17, no. 13. POINT VIII. HOW ONE SHOULD BEHAVE WITH THE DAMNED. 48.—With these, the greatest charity and patience must be shown. First (t) See Tract. XVI. no. 36.

[*Latin ed. p. 709*]

HOW TO DEAL WITH THE DAMNED. 697 When the confessor visits the condemned, he should begin by telling him that death is a gift from God, who desires to save him. He should say that we are all destined to leave this world, and that we must strive to reach eternity, which has no end. He should then speak to him about the blessed life of the saints, and the misery of the damned. Next, he should urge him to give thanks to God, who has waited for him until this very moment, and who has not allowed him to die while still in sin. Finally, he should encourage him to accept death with a joyful spirit, by associating it with the death that Christ the Lord suffered for his love. He should comfort him, saying that by accepting death for his sins, he is certainly saved, and saved with great merit, and that he will be greatly rewarded in heaven. He should then suggest that he confess his sins and freely reveal all his transgressions. He should especially ask if he harbors any hatred towards anyone, and if he keeps any consecrated hosts, holy oil, or superstitious writings. He should also ask if he has made any pact with a demon. After absolving him, he should take care that he receives Holy Communion frequently, and he should also remind him to commend himself frequently to the Mother of God, so that he may obtain a good death. As the condemned is led from his cell to the scaffold, he should say to him: "Come, my son, follow Jesus Christ, who has gone before you to Calvary, to suffer the death that is so dear to you." When he reaches the place of execution, he should reconcile and absolve him again, and remind him to gain an indulgence, and then say: "Come, N., be of good cheer, you are now in the grace of God; the gates of paradise are now open to you; Jesus and Mary await you there. Join your death to the death of Jesus, who died for your love, amidst mockery and torments. Do you love him? Tell me: Lord, I love you above all things; I want to die to do your will. Having accepted death for my sins, I hope that you have forgiven me; I am sorry for having offended you again. I long to come to heaven quickly, to kiss your feet, and to love you eternally." When the hood is placed over the condemned man's eyes, and he begins to ascend the scaffold, he should say to him: "My son, invoke the Mother of God, that she may assist you. Offer your death for your sins. Declare that you do not consent to any temptation of the devil." After he has ascended the scaffold (while the sentence of execution is being read), he should say: "Behold Jesus Christ, who awaits you with outstretched arms, to embrace you: Lord, I have offended you, I have displeased you; now I love you with all my heart, God of my soul. You call me, behold, I come. Mary, Virgin, help me. Lord, into your hands I commend my spirit. Jesus and Mary! Jesus,

Mary, Joseph!" 49. If, however, the condemned man stubbornly refuses to confess, what should be done? 1. The confessor should pray for him, and he should take care that he is also commended to God by others, especially by religious communities, so that they may help him with Masses and prayers. 2. He should tell the condemned man that, whether he repents or not, the sentence will be carried out. 3. He should ask if he perhaps despairs of his salvation, because he has given his soul to the devil? In this case, he should try to persuade him that such a pact is invalid; for God alone is the Lord of the soul, and as soon as he revokes his evil will, God forgives him all his sins. 4. He should ask if he harbors any hatred towards anyone, from which his obstinacy may arise? Furthermore, the confessor should, in the first instances in which he encounters such obstinacy, avoid pressing him to confess immediately, for he will become more obstinate. It is better to continue the conversation with him.

[*Latin ed. p. 710*]

698 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. Speak to him about death, to which all are subject; about the mercy of God; about the torments of hell; and about the joys of paradise. Relate to him the example of some sinner who died impenitent; or of someone condemned to death who, having received the grace of a holy death, when asked why he did not defend his innocence, since he had been condemned unjustly, replied: "And why? For many years I have asked God to grant me the grace to die a shameful death, like my Savior, who died for me. I have now obtained what I asked for, and would I now deny myself this desired fate?" And thus, he went cheerfully to the scaffold. After saying this, the confessor should leave the accused, so that he may ponder these things in his mind, and then ask him again whether he has perhaps changed his mind, and say to him: "My son, your death is approaching, what do you decide? It is in your power to choose between hell and heaven. Consider that if you die obstinately, you will regret it for all eternity, and that there will be no further remedy for so great an evil." If he still sees that the accused is hardened, he should take care that those present pray for him, and especially recite the litanies of the Blessed Virgin; and then he should kneel before him and beg him not to perish. If he does not succeed in persuading him by speaking, he should turn to speaking to the Crucifix. Then, if the accused has already arrived at the place of execution, he should implore the people to kneel down and offer fervent prayers for the obstinate man. It may also be helpful to frighten him by saying: "Depart, you cursed one, to hell, since you wish to destroy yourself. But know that your punishment in hell will be all the more severe because of the memory of this time that God is granting you, and which you are abusing." But afterwards, he should resume a gentle tone. If the condemned person has already ascended the scaffold and asks to confess, he should urge the ministers of justice to allow him to come down, protest-

ing that they are then obliged to grant him that time to confess. However, this applies only to those who have not yet confessed; for if the accused has already confessed, then the confessor should urge him to express an act of contrition, and then ask him in this way: "Come now, my son, do you not now intend to confess all your sins to me, and especially those that you have told me?" And when the accused answers yes, he should impose on him the lightest penance (e.g., that he invoke Jesus and Mary), and absolve him.

IX. HOW A CONFESSOR SHOULD BEHAVE WHEN DEALING WITH THOSE INFESTED BY DEMONS.

50. — Some who are possessed by evil spirits are tormented by horrible visions or bodily torments. The cure for these is easy: encourage them to pray, to be patient, and above all, to conform to the will of God. The confessor should not be so incredulous as to judge that all these invasions or infestations by demons are mere fantasies, or bodily infirmities; for it cannot be denied that true cases of possession are also found among Christians. The Church has indeed instituted so many exorcisms against these invasions, and the Council of Trent testifies that their practice has always been in use in the Church. Moreover, if there were no possessed, the order of exorcists would have been instituted in vain, to whom power is given over the demoniac and the catechumens (which certainly cannot be supposed); and indeed this order is one of the seven that have always been in the Church of God, as the same Council declares. However, it is always advisable to be suspicious of such invasions; for it cannot be denied that a large part of them are either fictions, or imaginations, or infirmities, especially in women.

[*Latin ed. p. 711*]

HOW THE DEMON INFESTS. 699 51.—Those who more frequently trouble the confessor with serious difficulties are those who are afflicted by vile visions, impulses, and even touches by a demon, which not only excites carnal desire, but sometimes has carnal intercourse with them in the form of a man or woman, and is therefore called a succubus or incubus. Some deny that these demons, incubi, or succubi exist; but the majority of authors affirm it, as Martin Delrio in *Disquis. Magic.* P. Hieronym. Menghi, book 2, chapter 15; Cardinal Petrucci, *Epist. part. 2*, book 2, opuscle 5, chapter 15, number 5; and Sixtus Sen., book 5, *Bibl. Sacr. Annot.* 77, citing Cyprian, St. Justin, Tertullian, etc. And St. Augustine confirms this most strongly in book 15 of *City of God*, chapter 23, at the beginning, where he writes: "Angels have appeared to men" in such bodies that they could not only be seen, but also touched." The true Scripture testifies that many (whom they commonly call "incubus") have often been wicked men who have desired and had intercourse with women. Some demons constantly attempt and achieve this impurity, and many such men

assert it, so that to deny it would seem imprudent. Indeed, demons can assume the bodies of the dead for this purpose, or they can create new bodies from the air and other elements, forming the appearance of human bodies that are palpable and warm, and thus adapting those bodies for intercourse. Moreover, the aforementioned Delrio states, citing St. Thomas, St. Bonaventure, Scotus, Abulensis, and others, that a demon can even bring true seed from elsewhere, imitate the natural emission of it, and that true offspring can be upon such intercourse, provided that the demon can receive that seed, for example, from a man experiencing nocturnal emission, and by preserving the prolific heat, immediately infuse it into the womb, in which case the offspring will not be the child of a demon, but of the one whose seed it is, as St. Thomas says through the cited author. Whether this can ever have happened or can happen, given the laws established by divine providence for the propagation of the human race, we leave to the judgment of the wiser. Here, however, the question arises whether, with God's permission, the demon can move the hand of someone without the person's fault, to pollute them with touches? Father Gravina, a Dominican, affirms this, and indeed probably so, for if a demon can move the entire body of someone, as is narrated about Simon the magician, who was lifted into the air by the power of a demon, why could it not also move the hand? Furthermore, if a demon can move the tongue of someone so that they involuntarily utter obscene words or blasphemies against God, why not the hand, so that shameful things are revealed? The same is felt by Cardinal Petrucci, book 2, chapter 5, number 8, who says: "It has not infrequently been found that a demon has somehow possessed a part of the human body, such as the eyes, the tongue, or even the genitals. Hence, the tongue utters the most obscene words, even though the mind is not aware of it at that time. Hence, impulses and affections sometimes arise that lead to shameful acts. Hence, certain afflictions, which I blush to write about." But these statements are most strongly confirmed by St. Thomas in 1, 4, question 80, article 3, in *Summa*, who says: "I answer that the devil, unless restrained by God, can compel someone to perform an act that is sinful in its own nature, but he cannot compel someone to sin." This is evident from the fact that a person does not resist the motive to sin unless through reason, the use of which the devil completely hinders.

[*Latin ed. p. 712*]

700. TRACTATE. ON HOW ONE SHOULD BEHAVE, ETC. » It is possible [for the devil] to move the imagination and the sensitive appetite, as in the case of the possessed; but then, with such a binding of reason that whatever a person does, it is not imputed to him as sin; but if reason is not completely bound, then, in that part which is free, it can resist sin, as stated above. » Therefore, it is clear that the devil cannot in any way force a person to sin. » Therefore, according to St. Thomas, a demon (with God's

permission) can deprive a person of all freedom to resist, just as it deprives the possessed, and can lead him to perform an act that is sinful in itself, without the person committing a formal sin. Furthermore, it is helpful to note what Father Scaramelli (1) wisely writes on this point: "This can be accomplished without formal sin on the part of the creature, provided that, at the time when the demon is externally acting, it completely hinders the use of reason internally, so as to deprive it of all freedom to resist; which, according to St. Thomas, can be done by so strongly moving the imagination and the sensitive appetite that, through such disturbances, all light of reason is extinguished." » Hence, the confessor should examine the penitent to see whether, in what he is suffering, he perceives the malice of sin, and whether he has any impulse restraining him from that action. For if he says that, during that temptation, his mind was so clouded that he knew nothing, and felt no remorse, then he can be considered free from sin. Conversely, if at that time some light of reason shines forth, so that reason is not completely bound and can resist, then he is not free from sin. » Furthermore, the aforementioned author points out and warns confessors to be careful that those who are experiencing such things should always subject these acts to the keys of absolution, because it is scarcely believable that they are free from at least venial sin, either because of imperfect awareness, or because of some lack of resistance that they should have exercised. 52. — If anyone ever comes afflicted by an enemy of this kind, through temptations (called the "spirit of fornication," from which St. Church especially commands us to pray to the Lord that He deliver us), the confessor should strive greatly to protect the penitent in such a terrible conflict; for the learned Cardinal Petrucci says that these souls are in great danger if remedies are not applied with great effectiveness, and sometimes, if necessary, even extraordinary ones; for, since great help from God is required to resist, and great force from the patient, it is difficult for one to emerge victorious from such battles unless he constantly adds great mortification, and above all, fervent prayer, commending himself a hundred times and a thousand times, groaning, and begging for mercy at the feet of the Crucified and the Mother of God, lamenting, and begging for mercy. Otherwise, if the soul cools and fails in prayer, or in mortification, Petrucci says that it will be in great danger of falling, at least indirectly, into some hidden indulgence of those abominable pleasures. Therefore, if the confessor can judge that there is absolutely no fault on the part of the penitent in this temptation, he should first of all advise him to use these means: he should help himself with fervent prayers, frequently invoking the Most Holy names of Jesus and Mary; he should diligently turn away from the pleasures of the senses; he should frequently receive Holy Communion; he should often protest that he does not wish to consent to any temptation, or to any delight that he feels is the work of the demon; he should often use the sign of the cross (carrying it with him), and blessed

water, sprinkling his bed and room with it; he should also bring (1) Father Scaramelli, *Directorio Mysticus*, treatise 1, chapter 11, paragraph 124.

[*Latin ed. p. 713*]

HOW TO ACT, etc. 701. He should carry with him a relic of the saints and a book of the Gospels, and also use private exorcisms, saying: "Unclean spirit, in the name of Jesus Christ, I command you to depart from me, and to no longer torment me." Furthermore, he should encourage the afflicted person, for he is often humbled by these torments, and he should often practice acts of humility, since God sometimes permits such temptations to remove some internal pride from the soul.

53. If anyone falls into these temptations, or seeks out opportunities for them rather than avoiding them, their cure is very difficult, for such sinners, who have dealings with a demon, are very difficult to convert from the heart. On the one hand, the demon acquires a certain dominion over their wills; on the other hand, they themselves remain too weak to resist. They need extraordinary grace from God, but God rarely grants this to such wicked people. However, the confessor, if such a person approaches him, should not be distrustful, but should show the utmost charity, and encourage them, saying that where there is no will, there is no sin; therefore, if they resist with their will, they do not sin. In these cases, the confessor should first of all preface an exorcism against the demon, at least a private one, which is certainly permissible in this way: "I, as a minister of God, command you, or you, unclean spirits, to depart from this creature of God." Then he should question the penitent whether they have ever invoked the enemy, and whether they have entered into any agreement with him? Whether they have ever denied the faith, or committed any act against it? He should ask how the demon appears to them, whether as a man, a woman, or a beast. For if they have carnal relations with him, in addition to the sin against chastity and religion, they will be guilty of the sin of fornication, or sodomy, or incest (understand the affective aspect), adultery, or sacrilege. He should also ask where and when they had this intercourse. Then he should show them the enormity of this crime, and seek to lead them to true conversion and to make a complete confession; for these lost people, even if they confess, easily commit sins again. Finally, he should prescribe the same remedies mentioned above, namely, that they often turn to God and the Blessed Virgin, that they frequently invoke the names of Jesus and Mary, that they use holy water and the sign of the cross, that they carry a relic and a Gospel with them, and that they often recite a private exorcism, as mentioned above. He should then delay giving them absolution, but encourage them to return often, so that he may know how they are doing in resisting the enemy's attacks, and in applying the remedies; and he should not absolve them unless after a long period of time, for such conversions, as we have said, are rarely true, and very rarely

lasting.

SECTION X. HOW A CONFESSOR SHOULD ACT WHEN HEARING THE CONFESSIONS OF WOMEN.

54. A confessor must be extremely cautious when hearing the confessions of women. And first, it should be noted that in the decree of the Holy Council of Bishops, January 24, 1610, it is said: "Confessors should not, without necessity, hear the confessions of women after the evening twilight, and before the morning." When speaking of the prudence of the confessor, it is better for him to be strict rather than lenient with younger women in the confessional.

[*Latin ed. p. 714*]

702 TRACT. LAST. HOW ONE SHOULD BEHAVE, etc. He should instruct these women to approach the confessional, so that they may speak with him, and certainly not to kiss his hands. During the act of confession, he should not show that he recognizes them; for some, who wish to be considered devout, sometimes, upon realizing that they are known by the confessor, do not make a complete confession. It is also imprudent to gaze at the penitents as they leave the confessional, and to observe them for some time. Outside the confessional, he should not even allow himself to be invited to converse with them in the church, and he should avoid all familiarity. He should also abstain from accepting gifts, and especially he should never go to their homes, except in the case of serious illness, and even then, only if called; and even then, he should exercise great diligence in hearing their confessions, leaving the door open, sitting in a place where he can be seen by others, and never taking his eyes off the face of the penitent. This is especially important if they are spiritual persons, with whom there is a greater danger of attachment. The Venerable Father Sertorius Caputus said that the devil, in order to unite spiritual persons, initially uses the pretext of virtue, so that later, affection may pass from virtue to the person: hence, Saint Augustine says, through Saint Thomas (1), "A brief and strict discourse should be held with these women; and yet, not because they are more holy, but because they are to be guarded against all the more; for the more holy they are, the more they attract." And the Angelic Doctor adds: "Although carnal affection is dangerous to all, it is even more pernicious to those who are conversing with a person who seems to be spiritual; for although the beginning may seem pure, frequent familiarity is a domestic danger; and this familiarity, when it increases, weakens the principal motive, and purity is stained." And he adds that such persons do not immediately realize this, because the devil does not initially send poisoned arrows, but only those that sting a little, and increase the affection. But soon, such persons become so that they no longer act as angels, as they had begun, but as if clothed in flesh; they look at each other, and they strike each other's minds with flattering words, which still seem to come

from their first devotion; hence, they begin to desire each other's presence: "and thus," he concludes, "spiritual devotion is transformed into carnal affection." Indeed, how many priests, who were previously innocent, have, through similar attachments that began spiritually, lost God along with their spirit!

55. — Furthermore, the confessor should not be so attached to the confessions of women that he refuses to hear those who come to him. Oh, what a misery it is to see so many confessors who spend a good part of the day hearing the confessions of certain religious women, whom they commonly call "Bizocas" [a term of disparagement], and when they later see men or married women approaching them, who are full of anxieties and troubles, and who have had great difficulty leaving their homes and businesses, they dismiss them, saying, "I have something else to do; go to others." Thus, these people, not finding anyone to whom they can confess their sins, live for many months and years without the sacraments and without God. This is not hearing confessions in order to please God, but rather in order to serve a whim; and I do not know what merit such confessors will have with God, who exercise their ministry in this way. I know, and contrary to the opinion of others who claim that it is a waste of time, that it is very pleasing to God to direct souls to the path of perfection: (1) St. Th. Opusc. 6, title on Family.

[*Latin ed. p. 715*]

APPENDIX I. DIRECTION OF SOULS, SPIRITUAL. 703 Therefore, I shall speak more fully about this in the final chapter. But I assert that virtuous confessors who only receive confessions to please God (as is customary for St. Philip Neri, St. John of the Cross, St. Peter of Alcantara, and others), when they perceive a soul in need, will present it to devout souls, to whom they can listen and assist, and when the confessor desires, time will not be lacking. APPENDIX I. HOW A CONFESSOR SHOULD BEHAVE IN GUIDING SPIRITUAL SOULS. 1. to 4. § I. Concerning meditation:—6. § II. Concerning contemplative prayer.—7. And here is discussed the natural collection (properly called *raccoglimento*), or contemplative leisure.—8 to 11. Concerning supernatural ardor, distinguishing between sensible and substantial experiences.—12. Concerning affirmative and negative contemplation.—13. Concerning supernatural collection.—14. Concerning quiet.—15. Concerning cloudiness.—16. Concerning active and passive union.—17. Concerning spiritual espultation, into which the soul enters through elevation (called ecstasy, rapture, and spiritual flight).—18. Concerning spiritual marriage.—19 and 20. Concerning visions.—21. Concerning locutions.—22. Concerning revelations.—23 and 24. Direction concerning all the aforementioned supernatural gifts.—25 to 27. § III. Concerning mortification.—28 to 36. § IV. Concerning the frequent reception of the

sacraments, especially Holy Communion.—37 and 38. Method of the perfect life for a religious person. I. — As the Lord once said to Jeremiah: « Lo, I have set thee this day over the nations, and over kingdoms, to root up, and to pull down, and to waste, and to destroy, and to build, and to plant. » so now He repeats this to each confessor, who must not only remove vices from his penitents, but must also instill virtues in them. Therefore, it is fitting to add here, at the end of this chapter, what may serve confessors who are beginners in guiding souls to perfection. Indeed, sinners are not to be driven away, as we said above, but rather, it is also necessary, and very pleasing to God, to adorn those very souls, that is, to cultivate spiritual souls, so that they may give themselves entirely to Him and surrender themselves to Him. A single, perfect soul is more pleasing in His sight than a thousand imperfect ones. Therefore, when a confessor sees a penitent living free from mortal sins, he must take all care to lead him on the path of perfection and divine love, by presenting to him the merit that God deserves to be loved; and the gratitude that we owe to Jesus Christ, who loved us so much as to die for us, and also the danger in which all souls are, who are called by God to a more perfect life, and resist Him. Therefore, the direction of the confessor concerning spiritual souls rests primarily on three things: meditation and contemplation, mortification, and the frequent reception of the sacraments, and we shall speak of each of these individually. § I. Concerning the prayer of meditation. 2. — Therefore, a prudent confessor, when he sees a soul abhorring mortal sins, and desiring to progress in divine love, must first of all prepare that soul for dedicating itself to mental prayer, that is, to meditation on eternal truths and divine goodness. And although it is not necessary for attaining eternal salvation, as prayer is necessary; nevertheless, it seems very necessary for souls, so that they may persevere in God's grace. Along with other works of piety, it can help to overcome sin.

[*Latin ed. p. 716*]

704 APPENDIX I. DIRECTIONS FOR GUIDING SOULS. Spiritual direction aims to unite the soul with God, but prayer and sin cannot coexist. The soul must either abandon prayer or abandon sin. St. Teresa said: "I am certain that the Lord will lead to the port of salvation any soul that perseveres in prayer, no matter how many sins the devil presents to her." And so, the devil seeks to obstruct prayer above all other exercises, for, as the same saint says, "The demon knows that he will certainly lose the soul that perseveringly devotes itself to prayer." Furthermore, love alone unites and binds the soul to God; but the furnace in which the flame of divine love is kindled is prayer, or meditation: "My heart grew hot within me." Ps. 38:4. 3. Therefore, the confessor should begin to introduce the soul into prayer. At the beginning, he should assign no more to half an hour; this time can then be increased or decreased as the soul's spiritual

growth progresses. He should not allow the penitent to give up because they find it difficult to find the time and place to pray; rather, he should urge them to raise their minds to God at least in the morning or evening, when there is more peace in the house, or even during their daily activities (when they cannot do otherwise), and to meditate on the truths of the faith, especially those concerning the end, whose contemplation is most useful for beginners. They should also meditate on the Passion of Christ, which is a fruitful meditation for all. If the penitent is not learned, it is helpful for them to use a spiritual book, so that they may more easily enter into prayer, as St. Teresa used to do. He should also advise them to choose the subject matter in which the soul experiences the greatest devotion; and in those places where the soul feels itself most strongly affected and moved, they should linger for a while, and, abandoning meditation, devote themselves entirely to acts of the will; either by making petitions, or by making resolutions. I say 1. they should exercise themselves in acts, that is, in acts of humility, thanksgiving, faith, hope, and especially in repeating acts of contrition and charity towards God, by offering themselves entirely to Him, surrendering their whole being to His most holy will, and by repeating, more than others, the act to which the soul feels itself most inclined. I say 2. they should exercise themselves in prayer: for all our good depends on prayer; and St. Augustine says that God rarely grants any grace to men, and especially the grace of perseverance, except through the channel of prayer. The Lord said: "Ask, and you shall receive." Therefore, St. Teresa concludes, "He who does not ask, does not receive." Therefore, if we want to save our souls, it is necessary to pray always, and above all to ask for perseverance and love for God; and indeed, there is no time more opportune for asking than the time of mental prayer. He who does not pray finds it difficult to ask, because he finds it difficult to consider the graces of which he stands in need, and the very necessity of asking; and therefore, he who does not pray, finds it difficult to persevere in the grace of God. I say 3. in order that prayer may not be fruitless, and that the soul may put into practice the insights it has received in prayer. As St. Francis of Sales says, no one should end their prayer without first making a specific determination, such as avoiding certain more common faults, or exercising a particular virtue in which they know themselves to be weak. See what is said on this subject in Appendix IV, towards the end, when we speak of instruction for mental prayer, § III. 4. Therefore, the confessor should demand an accounting from these souls regarding their prayer.

[*Latin ed. p. 717*]

ON THE PRAYER OF CONTEMPLATION, etc. 705. He should inquire from them how they are progressing in it, or at least whether they are practicing it; and he should urge them to confess, above all else, their neglect of prayer when they have omitted it. For, without prayer, the soul cannot

be saved. "The soul that omits prayer," said St. Theresa, "places itself, as it were, in hell, without the intervention of demons." O God, and how much benefit confessors can bring to souls by exercising this small diligence! And oh! how they will have to render an account to God if they do not act in this way; for they are bound to strive, as far as they can, for the spiritual progress of their penitents. O, how many souls they could lead to the path of perfection, and free from relapses into grievous sins, if they employed this slight effort in guiding them through the means of prayer, and in afterward inquiring, even at the beginning of their spiritual life, whether they are practicing it or not. When a soul has become established in prayer, it is very difficult for it to lose more of God; and therefore, mental prayer should be encouraged not only among the fearful, but also among sinners, who often, through a lack of consideration, relapse into their former ways.

5. Above all, confessors should exercise diligence in this matter when their penitents are experiencing spiritual desolation. At the beginning of a soul's journey into spiritual life, God often attracts it with certain special lights, tears, and other sensible consolations; but after a time, this stream often ceases, in order to test their fidelity, and to lead them to greater perfection, by withdrawing from them all sensible sweetness to which the soul easily clings, not without some impurity and fault arising from self-love. Sensible consolations (and supernatural attractions) are indeed gifts of God, but they are not God Himself; therefore, in order that souls beloved by Him may be drawn away even from His gifts, so that they may be compelled to love the Giver with purer love, He causes them to find no longer in prayer the accustomed nourishment and usual consolation, but rather tedium, aridity, torments, and sometimes even temptations. Therefore, the confessor must strive above all to encourage these souls, so that they do not abandon prayer, nor the prescribed Communions. He should remind them of the words of St. Francis de Sales: "Before God, one ounce of prayer in the midst of desolations is worth more than a hundred pounds in the midst of consolations." For he who loves God for the sake of consolations loves the consolations of God more than God Himself; but he who loves God, and cleaves to Him without these consolations, shows true love.

This is sufficient regarding meditation; but I consider it appropriate to give some information here to new confessors about infused contemplation, and its various stages, as well as about other supernatural gifts, together with the rules prescribed by the masters of spiritual life for the guidance of souls to whom God has been pleased to grant such graces.

§ II. On the prayer of contemplation, and its various stages.

6. When a soul is endowed by God with the grace of contemplation, it is necessary that the confessor should know well how to guide it, so as to free it from all illusions; otherwise, he will do it great harm, and, as St. John of the Cross says, will render a great account to God. Contemplation differs

greatly from meditation. In meditation, God is sought after through the labor of discourse; in contemplation, God, who has already been found, is contemplated without such labor. Furthermore, in meditation, the soul...

[*Latin ed. p. 718*]

706 APPENDIX I. ON THE DIRECTION OF SOULS. The spiritual life operates through the actions of its powers; in contemplation, God acts, and the soul simply receives, and receives into itself the gifts that divine grace infuses within it, without doing anything, because the very light and divine love with which it is then filled make it gently attentive to contemplating the goodness of God, who bestows so many gifts upon it.

7. It must also be noted that before granting souls the gift of contemplation, God often introduces them into a state of recollected prayer, commonly called *di Raccoglimento* or contemplative leisure (as the mystics call it), which is not yet infused contemplation, because the soul is still in an active state. This recollected state (I will speak here of the natural state, because we will speak of the supernatural and infused state later, in number 13) is when the intellect does not need to work as if it were outside the soul, to consider some mystery or eternal truth, but, being detached from external things and collected as it were within itself, without effort, indeed with great ease, it attends to that truth or mystery, whatever it may be. Contemplative leisure is almost the same, except that in recollectedness, the soul attends to some particular act of devotion; in leisure, however, it feels itself collected within itself, with a general knowledge of God, and is gently drawn to God. In this state of recollectedness or contemplative leisure, some mystics say that even if this prayer is natural, the soul should cease not only from meditation, but also from the actions of the will, such as love, offering, resignation, etc., and should remain only in a certain vigilance and attention to God, without performing any action. However, I cannot entirely agree with such statements. There is no doubt that when the soul finds itself recollected, it should not apply itself to meditation, because it has already, without any effort, found what it was seeking; moreover, as Father Segneri says in his excellent work on *Concordia inter laborem et quietem* (1), ordinary meditation, after a time, produces what is called acquired contemplation, namely, that which knows truths in a single act of understanding, which it previously knew only through a long process and effort. But despite this, I do not know why the soul should cease from good actions of the will: and what more opportune time could there be for performing these actions than when the soul feels itself recollected? Indeed, St. Francis de Sales gave advice to Blessed Joan of Chantal, that in her prayer, when she felt united to God, she should not repeat new acts, but why? Because, indeed, the Blessed had already reached passive contemplation. Therefore, when the soul is still in an active state, there is no reason why good actions should hinder the operation of grace. St. Francis

de Sales also prescribed to the devout souls he directed a certain number of aspirations of love to be made within a certain period of time. When the soul reaches the state of passive contemplation, even though it does not merit anything at that time, because it is not acting, but simply receiving, it nevertheless acquires a great strength to act later with greater perfection. But when the soul is still in an active state, in order to merit, it must act, by performing good actions: and these are the works by which the soul merits divine grace. Therefore, Father Segneri rightly concludes that when God speaks and acts, the soul must be silent and cease from its own operations, offering nothing on its part {1} Segn. p. 1, ch. 2, n. 2.

[*Latin ed. p. 719*]

ON THE PRAYER OF CONTEMPLATION, etc. 707. The beginning of contemplation is a certain attention, a kind of love directed towards divine things. But when God does not speak, it is necessary for the soul to help itself in every way possible to unite itself with God, namely, through meditations (when these are necessary), affections, prayers, and resolutions, provided that these actions are not elicited unwillingly; hence, they should only be undertaken when the soul feels itself inclined towards them.

8. Furthermore, it must be noted that God, before introducing the soul into the prayer of contemplation, often purifies it by placing it in a supernatural dryness, which is called spiritual purgation, in order to cleanse it from its imperfections, which hinder contemplation. And here, a distinction must be made between sensible dryness, which pertains to the senses, and substantial dryness, which pertains to the spirit. Sensible dryness (of substantial dryness we shall speak in the following section), when it is natural, brings with it a certain boredom with spiritual things, and a certain slight and less lasting obscurity; but when it is supernatural, as we are speaking of here, it places the soul in a deeper obscurity, which lasts longer, and daily increases. Nevertheless, the soul, being in this state, although it feels itself more alienated from creatures, and has its thoughts constantly fixed on God, together with a great desire and determination to love Him perfectly, nevertheless feels itself rendered, as it were, incapable of accomplishing this, because of its imperfections, for which reason it seems to have become odious to God; but meanwhile, despite this, it does not cease to conduct itself properly in virtues. This troublesome dryness is a certain trial of grace, it is a certain supernatural light, but a light that brings penalty and obscurity, because, wishing to communicate itself to the naked spirit, and finding the senses and powers of its soul not yet capable, because they are not yet completely detached from sensible consolations, and consequently from material things, which are full of forms, images, and figures, it produces in the soul such darkness, which is so troublesome, but very useful, because through it the soul arrives at a certain alienation from all sensible pleasures, both earthly and spiritual; and furthermore, it acquires a great

knowledge of its own miseries, and its inability to accomplish any good work, and at the same time, great veneration for God, who is presented to it as venerable and terrible. In this state, the director should encourage the soul to hope for great things from God, who acts in this way towards it for this very purpose. He should suggest to her that she should not try to exercise herself in meditation, but that she should humble herself, make acts of oblation, and entrust herself entirely to God, perfectly resigned to the dispositions of His will, which is entirely directed towards our good.

9. After this purgation of the senses, the Lord often grants the gift of contemplation, which is called joy, namely, supernatural recollection, quiet, and union, of which we shall speak later, but before union, and after recollection and quiet, the Lord often purifies the soul by a dryness of the spirit, which is called substantial dryness, by which the Lord wishes the soul to annihilate itself entirely in itself. Sensible dryness is the subtraction of sensible devotion; but spiritual dryness is a certain divine light, by which God makes the soul recognize its own nothingness. And here is where the soul finds itself in a more terrible agony; for even if at that time it is more determined to conquer itself in all things, and more attentive to pleasing God, nevertheless...

[*Latin ed. p. 720*]

708 APPENDIX I. DIRECTION OF SOULS. The more a soul recognizes its imperfections, the more it feels abandoned and forsaken by God, as if ungrateful for the benefits received. Indeed, even the spiritual exercises it undertakes, such as prayer, Communion, and mortification, cause it greater distress, for since it performs all these things with great weariness and pain, it believes that it deserves punishment and that it is more odious to God. Often, these souls seem to hate God intensely, believing that God has already condemned them as enemies; and yet, in life, they experience the torments of the damned and divine abandonment. At times, God allows such desolations to be accompanied by a thousand other temptations, such as impure thoughts, anger, blasphemies, incredulity, and especially despair; so that these poor souls, unable to discern the will of God in that great darkness and confusion (which truly is still present, but is hidden from them, or at least doubtful due to the present darkness), fear that they have already consented, and therefore believe all the more that they have been abandoned by God.

10. Therefore, the confessor, when he encounters one of these souls who is progressing towards perfection and believes herself to be abandoned, should first not be frightened by this confusion, nor by so many expressions of fear and despair; nor should he appear timid or hesitant in any way, but should encourage her manfully, telling her that she has nothing to fear. At this time, he should encourage her more than ever to trust in God, reciting to her the words that the Lord spoke to St. Teresa, namely, that no one loses

God without knowing that they are losing Him. He should tell her that all those suggestions of blasphemies, incredulity, impurity, and despair are not consent, but punishments, which, if endured with resignation, will unite the soul more and more to God. He should tell her that God never hates a soul that He loves, and that is of good will. He should add that God acts in this way with those souls whom He loves most. "God tests His lovers with aridity and temptations," St. Teresa said. "Although the aridity may last throughout life, the soul should not neglect prayer; for there will come a time when all things will be made clear to her." Oh, what a beautiful sentiment for a desolate soul! Therefore, he should encourage her to be of strong spirit and to manfully await great things from God, while He leads her along the safer path, namely, the path of the Cross. He should also remind her to humble herself, as being worthy of such treatment from God because of the imperfections of her past life. Secondly, she should surrender herself entirely to the divine will, making herself ready to endure all things, indeed, even greater things, for as long as it pleases God. Thirdly, she should cast herself as dead into the arms of divine mercy, and commend herself to the protection of the Most Blessed Virgin, who is rightly called the Mother of Mercy and the Consoler of the afflicted.

11. The aridity of the senses persists until the senses are purified, and the soul is made fit for contemplation. The aridity of the spirit, however, lasts until the soul is made capable of divine union; although sometimes, even after union, the Lord allows the soul to return to this aridity, especially in order that the soul may not become negligent, and may continually recognize its nothingness.

12. After the purification of the senses, and after the aridity of the senses has reached its end, God places the soul in the state of contemplation. Contemplation is either positive or negative. It is positive when, through the benefit of divine light, the soul perceives some elevated truth without any effort on its own part.

[*Latin ed. p. 721*]

ON THE PRAYER OF CONTEMPLATION, etc. 709 so that it may be the unhappiness of hell, the happiness of paradise, etc., or the uncreated, such as divine mercy, love, power, goodness. It is negative when one recognizes divine perfections not in a particular way, but in a general way, with a certain confused knowledge, but which suggests a concept of a much greater magnitude of the divine. And thus, even in confusion, one recognizes some created truth, such as the horror of hell, etc. But let us proceed to the first stages of contemplation; these are: interior recollection of the spirit, and quiet: we will speak of union later. 13. — Therefore, the first stage of contemplation is supernatural recollection. We have already spoken of the natural one above, no. 7, which occurs when the powers of the soul are gathered together to consider God within itself, and it is called natural, not

because the soul is able to accomplish it by itself; for every act of virtue, in order to merit eternal reward, requires the help of grace, and therefore, speaking generally, it is also supernatural: but it is called natural because the soul is then in an active state, and operates by the benefit of ordinary grace. Supernatural recollection, however, is that which is accomplished by God through the ministry of some extraordinary grace, and through which God places the soul in a passive state; thus, supernatural, or infused, recollection is properly said to occur when the gathering of the powers does not happen through the work of the soul itself, but through the benefit of the light that God infuses, and through which a great and sensible divine love is aroused in the soul. In this state, the soul should not be thinking about suspending the tranquil course that the light itself may gently suggest to it: nor should it rely on considering particular things, or on making determinations that it is able to accomplish. Nor should it investigate more closely what the interior spirit of recollection is: but it should allow itself to be guided by God to consider those things, and to perform those acts to which it feels more drawn by God. 14. — The second stage is quiet. In recollection, the power of love is communicated immediately to external senses, which God himself causes to be gathered within the soul. But in quiet, love is communicated immediately to the spirit, in the very center of the soul: and the love itself is more ardent, and then also spreads to the external senses; this, however, does not always happen: hence it often happens that the soul has the prayer of quiet, but without any sensible sweetness. St. Theresa says (1) that in this prayer, not all powers are suspended: the will is indeed suspended, and remains as if bound, because at that time no other object can be loved besides God, who draws it to Himself: but the intellect and memory, or sometimes the imagination, remain free, and run hither and thither. Hence, the Saint says (2) that the soul should not be saddened by this: "Let it laugh," she says, "at its own thoughts, and let it abandon them as if they were foolish, and remain in its quiet: and when the will is the mistress, it will bring the thought back to itself without any effort on your part. But if the soul wants to apply itself to gathering thoughts, it will accomplish nothing at all, and will lose its quiet. In this state, the soul should apply itself much less than in recollection to making determinations, or performing other acts that come from itself; it should only perform those acts to which it feels gently drawn by God. 15. — Let us now say something about the prayer of pure contemplation, namely, the negative contemplation mentioned above, which is far more perfect than the positive one. This negative contemplation is called *clara caligo*, because of (1) In vita c. 14. — (2) Cammin. di Perfez. p. 309.

[*Latin ed. p. 722*]

710 APPENDIX I. DIRECTIONS FOR SOULS. The abundance of light can obscure understanding: just as he who gazes at the sun is blinded by the

brilliance of its rays and sees nothing, but only understands that the sun is a great light, so God infuses the soul with a great light in this darkness, which causes it to understand not some particular truth, but to acquire a general and somewhat confused knowledge of His incomprehensible goodness, from which the soul begins to form a most exalted idea of God, albeit a confused one. When the soul knows some of the divine perfections, it even conceives of the concept of His goodness, but a much better concept is formed when it understands that the divine perfection cannot be comprehended. Cardinal Petruccius writes in his most learned letters that this prayer is therefore called the prayer of darkness, because in this life the soul is not capable of clearly understanding the divinity; hence, in this state, it understands by not understanding; but it understands much better than by any other way of understanding. It does not understand, because since God is not a thing that forms an image or figure, the intellect cannot form an idea of Him; and therefore, it understands nothing other than that it cannot understand Him; therefore, this kind of understanding is called by the Areopagite, "Sublime knowledge of God through ignorance." In this prayer of darkness, all the interior powers of the soul are suspended, and sometimes even the external senses, so that the soul sometimes enters into a spiritual intoxication, which causes it to break out into certain deliria of love, such as songs, cries, immoderate weeping, dances, and the like, as happened with St. Mary Magdalene of Pazzis. 16. After these steps, the Lord leads the soul to union. The sole purpose of the soul here should be union with God; but in order for the soul to attain perfection, passive union is not necessary; it is enough for it to reach active union. Very few, says St. Theresa, are those souls that are led by God through supernatural ways: and in heaven we shall see many who, without such supernatural graces, will be more glorious than those who have received these graces. Active union is perfect uniformity with the divine will, in which true perfection of divine love certainly consists: "Perfection," says St. Theresa (1), "does not consist in ecstasy; but" true union of the soul with God is union of will with the divine will. This union is necessary, but not passive union; and those souls who have only active union, says the same saint (2), "it can happen that they have" a much greater merit, because they suffer greater labor, and the Lord" guides them as strong, and the consolations which they do not have in this life, He preserves them to give them in the other. Cardinal Petruccius says that without infused contemplation, the soul can indeed, by the benefit of ordinary grace, attain to the annihilation of its own will, and to transform it into God, by willing nothing other than the will of God. And although it feels the movements of passions, these do not hinder that aforementioned transformation; hence, he adds that since all sanctity consists in this, each one should desire and ask nothing else from God, than to be guided by Him, and to accomplish His will in Him. St. Theresa, speaking of passive union, says (3) that the soul, placed in it,

"does not see, does not" feel, nor does it notice itself, "because from the abundance of light and love, that blessed darkness is formed in which all the powers of the soul are suspended: memory does not remember, except God; will is joined (1) *Concetti dell' Amor di Dio* Conv. III. — (2) *Avvisi per L'oraz.* Avv. 22. — (3) *Mans.* V. cap. 1.

[*Latin ed. p. 723*]

ON THE PRAYER OF CONTEMPLATION, etc. 711. With such love for God that she is unable to love any other object, and the intellect is so filled with light that it is unable to think of anything else, nor even of the grace she is presently receiving; hence, she understands much, but she cannot comprehend what she understands. In short, the soul, being in this state, has a clear and experimental knowledge of the presence of God, who joins her to Himself in the center of her soul. This union, says St. Theresa (1), does not last long, but rarely exceeds half an hour. In other contemplations, of which we have spoken before, God presents Himself as being near the soul; but here, He presents Himself as being present, and the soul experiences Him as being joined to her through a certain sweet contact. Hence, says St. Theresa (2), in other contemplations the soul may doubt whether it is God; but in this one, she does not. Nevertheless, the confessor should remind her that she has not thereby avoided being impeccable, and that the more she sees herself being given such graces by God, the more she should be humble, and detached from all things, loving only the cross, and living in complete conformity with all divine dispositions, with constant fear that her infidelities will be punished more severely from that time on, because they will be committed with greater ingratitude. St. Theresa (3) mentions having known several souls who, having previously ascended to this state of union, afterwards fell into mortal sins. 17. There are three kinds of union: the simple union, the union of espousal, and the perfect union, which is called the union of spiritual marriage. The simple union is that of which we have spoken up to now. Now, we must speak of the union of espousal. This union is usually preceded by a substantial aridity, which is the purification of the spirit, of which we have already spoken in n. 8. In this union of espousal, there are three different degrees: ecstasy, rapture, and elevation of the spirit. In the simple union, the powers are suspended, but not the bodily senses, although these remain very weak in their ability to act. In the union of ecstasy, the use of the senses is also lost; so that the person does not see, does not hear, and does not perceive either cuts or burns. Rapture is nothing other than a certain more powerful impression of grace, by which the Lord not only elevates the soul to union, but also carries it away with a sudden and violent movement: so that sometimes even the body is lifted, and becomes light as a feather. Elevation of the spirit is when the soul feels herself being carried away as if outside of herself, and lifted above herself with great violence, and from the beginning, she experiences great fear.

In the elevation of the spirit, both ecstasy are contained, because the loss of the senses occurs, as well as rapture, that is, the violent movement. A certain person who had been given similar graces by God told me that in such elevations of the spirit, it seemed to her as if her soul had been torn from her body, and lifted with such speed, as if she were completing ten million miles in any given moment, not without great fear, because she did not know where she was going; but afterwards, when she had settled down, she was enlightened to understand some divine mystery. But here arises a doubt: if in this union the powers are suspended, and the intellect, obscured by the abyss of light, is unable to attend to the things it understands; how can the soul understand anything, and speak of that divine mystery? The mystics reply that when God wants the soul to understand some secret, or to receive some vision (1) In vita, cap. 18. — (2) Mans. V. c. 1. — (3) Mans. V. et VI.

[*Latin ed. p. 724*]

712 APPENDIX I. DIRECTION FOR SOULS. The spiritual, or imaginative, activity diminishes the light to some degree, so that the soul remains capable of understanding and discerning whatever God wills. 18. — Finally, the most perfect union, which is said to be consummated, and greater than God can grant to the traveling soul in this life, is that which is called the spiritual marriage, through which the soul is transformed into God, and becomes one thing with God, just as a vessel of water poured into the sea becomes one with the water of the sea. And it must be noted here that in the other unions, as the mystics say, the powers remain suspended; but in this one, they are not suspended at all; for the powers, purified from their sensitivity and materiality, have already become capable of divine union, so that the will loves God most peacefully, the intellect rightly knows and attends to this intimate divine union which has already been made in the center of the soul, which happens in the same way as if someone were to gaze at the sun and, without any offense to the eyes, recognize the splendor of the sun. Furthermore, it must be noted that this union is not transient, as are the two previous ones, but permanent; so that the soul habitually enjoys the divine presence already joined to it, and enjoys it in stable peace; for passions trouble it no further: indeed, the soul perceives them as they show their face, but is not saddened, nor does it suffer any annoyance from them, just as one who dwells above the clouds might see storms occurring below, and yet not be touched by them. 19. — It will not be out of place here to speak of visions, locutions, and revelations, in order to distinguish between false and true ones. Visions are either external, or imaginative, or intellectual. External visions are those that are seen with the eyes. Imaginative visions are those that are seen in the imagination, or the imaginative faculty. Intellectual visions are those that are not seen with the eyes, nor in the imagination, but are perceived by the intellect alone, aided by the

divine light, which introduces intelligible forms; and this type of vision, according to St. Theresa, is entirely spiritual, for it has no part of the senses, neither external, nor internal, which are the imagination and fantasy. It should be noted that neither the eyes nor the imagination can perceive things presented to the soul, except in a bodily appearance, even if they are spiritual substances. On the contrary, through the help of the intellect, things are perceived as spiritual, even if they are material; or, to put it better, they are known, not seen, but known much better than if they were seen with the eyes. 20. However, it must be noted that God and the devil can both work these visions, which is to be understood even of the intellectual ones, as St. John of the Cross seems to imply (1), contrary to what Cardinal Petrucci believes; although bodily visions are much easier to produce, and are mostly and especially formed in women by the imagination itself. The signs for distinguishing between true and false visions are: 1. if they come unexpectedly, without any preceding thought in the soul; 2. if they initially bring confusion and terror, but afterwards leave the soul in peace; 3. if they are rare, because frequent ones are very suspicious; 4. if they do not last long; for, as St. Theresa says (2), when the soul perceives something presented to it for a long time, it is a sign that it is rather an act of the imagination. A divine vision usually passes like lightning, but remains firmly fixed in the mind. 5. A true vision leaves the soul in perfect peace, and with a vivid awareness of its misery, not without a great desire for perfection; in contrast to (1) Salita, book 2, chapter 25. — (2) Mansions, VI, chapter 9.

[*Latin ed. p. 725*]

ON THE PRAYER OF CONTEMPLATION, etc. 713 Sometimes, demonic visions leave a faint impression, and leave the soul in a certain dryness, disturbance, feelings of self-importance, and a keen longing for these graces. But, as St. Teresa says (1), with all the aforementioned signs, there can be no certain security, for often the demon feigns quietude, thoughts of humility, and desires for perfection; and all of this is uncertain as to its origin, for often the demon himself suggests these things, in order to gain credence, and thus to achieve the fruit and deceptions he intends. Therefore, the director, speaking generally, should not prevent the soul from recounting such visions to him, indeed, he should urge her to reveal whatever she sees, whether it be true or false, as St. Teresa teaches (2); but, on the contrary, he should show no curiosity in knowing about such visions, nor should he interrogate the soul minutely about them, nor should he anticipate by saying: "Did you?" or "Did you see this or that?" for then the soul will easily answer affirmatively, either out of malice or simplicity. If he clearly knows that such visions are the product of fantasy or are demonic, because they perhaps lead the soul away from obedience, humility, or some other virtue, then he should openly tell her this. But if

the confessor does not discern this, it is certainly not advisable to assert with certainty that these visions are either demonic or fantasies; as some who are too incredulous do (contrary to others, who are too credulous, and believe everything to be true); but he should tell the penitent to pray to God that she may not be led down such dangerous paths, and to declare that, as long as she lives on earth, she wishes to know God only through the way of faith. Furthermore, he should suggest to her that, from the visions she has had, whether false or true, she may perceive the fruit that is most necessary, and especially how to conduct herself properly with God; for by acting in this way, even if the visions were from the demon, the demon will remain frustrated. 21. As for words, speech can be successive, formal, and substantial. Successive speech is when, while meditating on some truth of faith, the soul feels as if she is being answered by her to her own spirit, but as if by an external person. This, when it produces good effects, such as extraordinary love or humility, can be a special sign of God's presence; but when it does not increase the usual love, it is a sign that it is the intelligence of the soul's own understanding. Formal speech is when the soul hears some formed words, but outside of herself; and this can be perceived either by the ears, or by the imagination, or by the intellect. To discern whether this is divine or demonic, one must consider the things it expresses, or the actions it commands, and the effects it leaves behind. Especially, if it is divine, it will leave a certain ease in enduring all things, in working, and in humbling oneself, and will inspire acts of patience, self-denial, or some other spiritual work. Substantial speech is the same as formal speech, and differs only in its effect, for formal speech either instructs or commands; substantial speech, on the other hand, quickly produces what it expresses: for example, if it says: "Be consoled," "Do not be afraid," "Love me," the soul will then immediately be filled with consolation, be free from fear, or be inflamed with love. This kind of speech is the safest of all; the first is very uncertain; the second, that is, formal speech, is very suspect, especially when it commands actions to be performed; therefore, if the director observes that the things commanded are contrary to Christian prudence, he should completely forbid them; but if they are not imprudent, (1) Mans. VI. c. p. — (2) Mans. V. c. p.

[*Latin ed. p. 726*]

714 APPENDIX I. SPIRITUAL DIRECTION: It is advisable for the director to suspend the execution of any spiritual exercises, as long as the soul does not feel secure, and even more so if the matters are extraordinary. 22. — Finally, concerning revelations of hidden or future things, such as mysteries of the faith, the state of consciences, predestination of souls, death, advancement to some dignity, and the like; these can be received in three ways: through visions, through locutions, and through the understanding of naked truths. In such revelations, the director must exercise

great prudence, and should not be too quick to believe, especially when it comes to acting upon knowledge received in a revelation. Above all, he should instruct the soul not to reveal the revelation to others, and he himself should always proceed with the utmost caution, indeed, he should seek the counsel of wiser individuals, because such revelations are very often doubtful and suspect. Less suspect are the understandings of simple truths concerning mysteries, divine attributes, the malice of sin, the unhappiness of the damned, and the like; these, as St. John of the Cross says (1), should not be sought by the soul, but if they are granted to her, they should be humbly received and not rejected. 23. — Here arises a doubt: whether all these kinds of graces and supernatural communications should be rejected or accepted? And, as a learned author (2) says, along with St. John of the Cross and others, it must be distinguished that those graces which lead away from faith, because they consist of certain distinct notions, such as visions, locutions, and revelations, should be rejected with all effort; but, on the contrary, those which are in harmony with faith, such as confused and general knowledge, and the divine touch which unites the soul to God, should not be rejected, but may be humbly sought and desired, so that the soul may be more and more united to God and strengthened in His holy love. This, however, applies to those souls who are already granted such favors; for others, the safer course is to desire and seek only active union, which, as we have said, is the union of our will with the divine will. Therefore, when the director encounters a soul with these communications of contemplation, or of darkness, or of union, he should not impose upon her that she reject them, but that she humbly and with thanksgiving receive them. He should always use words that do not make the soul completely secure, but leave some fear, which, although it does not disturb her, will keep her in humility and prevent her from becoming conceited. However, regarding certain distinct knowledge received through visions and the like, as we said above, the confessor should most firmly instruct the soul to reject them, always, however, in a spirit of humility (and without any contempt, such as scoffing or ridiculing, which is not permitted, as many assert), and by protesting before God that she wishes to serve Him in pure faith. Furthermore, St. Teresa says that whenever a soul feels herself sweetly inflamed with love for God, she should consider it a divine communication, not in order to believe that she is better than others, but in order to prepare her soul to walk more perfectly before God; by acting in this way, God will ensure that the demon, even if he has some part in it, will be defeated and will harm himself with his own weapons. 24. — But let us conclude. The director should, therefore, 1. Instruct the soul, as we have said above, to faithfully recount all the communications she has. (1) Salita, book 1, chapter 55. (2) F. Bern. da Castelvetere, *Directt. Mist.*, book 2, page 2,

chapter 1.

[*Latin ed. p. 727*]

ON THE PRAYER OF CONTEMPLATION, etc. 715. By prayer, however, she does not demonstrate any desire for knowledge, nor does she ever reveal to others the supernatural graces granted to her repentance; for it will be as if they rely on her prayers, thereby exposing her to great danger of pride. Or, if, after this knowledge, they notice even the slightest fault, they will be greatly scandalized and will hold her in derision.

2. She does not reveal to this soul any particular sign of esteem for such favors, and much less does she encourage other penitents to seek counsel from her, or to request solace or guidance; rather, she reveals that she is of lesser worth than other souls who walk the path of faith, for souls adorned with these favors are, by regular standards, always and greatly to be humbled.

3. If the soul is to preserve humility and fear in these divine communications, it is necessary to help her, indeed, to make her feel secure, whenever it is possible to ascertain this. St. Theresa says that a soul will never be moved to do great things for God, unless it recognizes that it has received great things from God. Indeed, the same Saint, when she was made more certain by SS. Francis of Borgia and Peter of Alcantara that the gifts she had received were truly divine, from that time onward she no longer strove for perfection, but rather progressed. Nor should the director conclude that all such communications are lies and illusions, simply because he observes the soul repeatedly falling into some fault (unless the faults are fully confessed, or committed with attachment and contempt). The Lord grants such graces not only to perfect souls, but sometimes even to imperfect ones, that is to say, in order to free them from their imperfections and to raise them to a more perfect life. Therefore, when it is recognized that through such communications the soul is increasingly freed from passions, and progresses in divine love, and in the desire for perfection, it is a sign that these communications are good.

As for external graces, such as visions, locutions, and revelations, it is generally safer for the director to consider them as of little importance, saying what St. Theresa says (1) from Heaven after her death to a certain religious person: "Let souls not trust in particular visions and revelations; nor let them place perfection in having them: for although some of them are true, many are false and deceitful, and it is difficult to find one truth among many lies (for there are more false visions than true ones), and the more eagerly they are sought and valued, the more the person will stray from faith and humility, which is the safer path that God has established. Therefore, let her be advised to pray to God to grant her a true ecstasy, that is, a complete detachment from earthly things, and from herself, without which she will never be able to attain perfection."

If, however, the director ever observes that the soul is not well-founded in the knowledge of its own misery, and insists that her communications are divine, and is troubled to hear that the director is unwilling to believe them to be such, this is a very bad sign: it is a sign that they are of the devil, by the effects that are observed, namely, attachment and pride; or it is an indication that the soul is not walking well, for it should at least doubt whenever the confessor doubts: and therefore, in this case, it is necessary in every way to humble her, and to keep her in fear as much as possible; and if she does not even acquiesce in this, deprive her of communion, and mortify her more severely, for then she is in great danger of being deceived by the devil. (1) Life, chapter 15, and Manual, VI, chapter 9.

[*Latin ed. p. 728*]

716 APPENDIX I. DIRECTIO ANIMARUM SPIR. Finally, the director, even if he believed that his communications were guided by God, should advise the soul to always keep before her eyes (or at least in the beginning) some point of the life or passion of Jesus Christ. Saint Teresa said that a soul which loses sight of the good Jesus will never attain perfect union with God. Souls who are beginning their spiritual journey meditate on the Lord's Passion in a discursive manner; contemplative souls, however, do not use discourse, but rather focus on a particular mystery, marveling at the divine goodness, mercy, and love, and thus God, when He wills, leads them to contemplation of His divinity.

§ III. On Mortification.

25. — Regarding mortification, it must be noted that when souls begin their spiritual life, the Lord, as we have said, often attracts them with sensible consolations, and they are then eager to mortify themselves through disciplines, cilices, fasts, and similar exercises of penance. Meanwhile, the director must be very cautious in granting such mortifications; for otherwise, when aridity arrives, as it usually does, the soul, deprived of its former sensible fervor, easily abandons all its mortifications, and, beginning to doubt, may even abandon prayer and the spiritual life itself, considering them to be less suitable to her, and consequently, she abandons everything. Sometimes it also happens that souls who are just beginning, due to this fervor, become immoderate and fall ill, and then, to recover, they abandon all spiritual exercises, with great danger of not resuming them again. Therefore, the director must take care that first the soul is strengthened in the spiritual life; and then, considering the circumstances of her health, her occupations, and her fervor, he should grant her those external mortifications which he judges to be most suitable for her, according to Christian prudence. I say according to Christian prudence, because there are some directors who are so imprudent that they seem to believe that all of a soul's progress depends on burdening her with fasts, cilices, bloody disciplines, and similar things. Others, on the other hand, seem to reject all external

mortifications as useless for spiritual progress, placing all perfection in interior mortification. But these also are mistaken, like the former, because bodily mortifications aid interior ones, and are, in a certain way, necessary (when they can be practiced) to restrain the senses; and therefore, we read that they were practiced more or less by all the saints. It is true that interior mortification of the passions is especially required of penitents; that is, not to respond to injuries, not to seek, nor to manifest to others things that tend to self-esteem, to yield in arguments, to conform to the will of others (but without spiritual harm); therefore, it is sometimes advisable to forbid a soul all external mortifications, until she feels free from some dominant passion, such as vanity, resentment, greed for worldly things, self-esteem, or her own will. But to absolutely assert that external mortifications are of no use, or of little use, is the greatest error. Saint John of the Cross said that those who reject penances should not be given any credence, even if they performed miracles.

26. — Therefore, from the beginning, the director should first and foremost instruct the penitent to never do anything against, or without, his obedience. Whoever acts against obedience...

[*Latin ed. p. 729*]

ON MORTIFICATION. 717 "These," says Saint John of the Cross, "practice penances, but they advance more in vices than in virtues." Let it also be understood, as I have said, that one should be very firm in granting such mortifications, even though the penitents may urge them more insistently. It will be sufficient at the beginning to grant them some slight, but rare, mortification, such as fasting, a small iron chain, or abstinence, rather to awaken in their minds the desire for mortification, than to mortify them as is fitting; and later, with the passage of time, one can be more generous, according to the progress the soul makes in virtues: for when it is firmly established in the spirit, one will not be able to deny it suitable mortifications without scruple. Moreover, generally speaking, let one propose to oneself this rule: never to grant external mortifications unless they are requested; for these are of little use if they are received without great willingness: and whenever one grants them, always grant less than is requested, and rather, as Cassian says, exceed in denying than in granting. Above all, let one urge the mortification of the stomach, which some spiritual souls do not very much love: this is truly the hardest, but most useful, for the spirit, and often even for the body. Saint Philip Neri said: "He who does not restrain his stomach, will never attain perfection." On the contrary, be sparing in granting mortifications of sleep, for these are easily harmful, both to the body and to the spirit; for if sufficient sleep is taken away, the head suffers, and with a languid head, the person remains incapable of meditating, and of other exercises of devotion. Whatever mortification one grants to the penitent, in order to remove all occasion for pride, let one persuade

him that this is absolutely nothing in comparison to what the saints have enough, and in comparison to the punishments which Jesus Christ has suffered for us. Saint Teresa said: "Everything is impurity, whatever we can do, in comparison to one drop of the blood which the Lord shed for us." Better, more useful, and less dangerous mortifications are those that are negative, and to make these, generally speaking, obedience to the director is not necessary, such as depriving oneself of the sight or hearing of curious things, speaking sparingly, being content with foods of less pleasant taste, or poorly prepared, not approaching the fire in winter, choosing for oneself things of lesser value; rejoicing and being glad when some things, even necessary ones, are lacking; for in this consists the virtue of poverty, as Saint Bernard says: "The virtue of poverty is not poverty itself, but the love of poverty." Moreover, not complaining about the inconveniences of the times, about contempt for oneself, about persecutions and annoyances, about the infirmities of the body. In Jerusalem celestial, stones are perfected by scourges and pains. Saint Teresa said: "To believe that God admits into His friendship a mind that seeks comfort, is madness. Souls that truly love God do not seek quiet."

27. Here arises a doubt: The Gospel says in one place: "So let your light shine before men, that they may see your good works, and glorify your Father who is in heaven." Matthew 5:16. In another place it says: "But when thou dost alms, let not thy left hand know what thy right hand doth." Matthew 6:3. Therefore, the question arises, whether acts of virtue are to be made manifest to others, or to be hidden? And the answer is given by distinguishing: Acts common to the practice of Christian virtue are to be performed.

[*Latin ed. p. 730*]

718 APPENDIX I. DIRECTIONS FOR SPIRITUAL DIRECTION. To be observed openly: frequent reception of the sacraments, mental prayer, visits to the Venerable [priest], listening to Mass with knees bent, and with interior recollection, modest glances; maintaining silence in church; saying: "I want to become holy," avoiding idle talk, dangerous conversations, curiosity, and the like. Those works which are said to be extraordinary acts of penance, and which seem to be of a singular nature, such as, as mentioned above, external penances with scourges, prayers with arms outstretched in the form of a cross, eating bitter herbs, sighs, and tears during prayer, etc., should be concealed as much as possible. But other works of virtue, such as ministering to the sick, giving alms to the poor, humbling oneself when being wronged, and the like, it will be better to conceal as much as possible. But if, perhaps, they cannot be performed except publicly, they should not be omitted, provided that they are done only with the intention of pleasing God. § IV. On the Frequency of the Sacraments. 28. — Finally, something must be said about the way in which a confessor should guide

spiritual souls regarding the frequency of the sacraments, namely, Confession and Holy Communion. With regard to Confession, it is advisable to instruct them generally to confess their sins, if they have not yet done so; because if they have already confessed, or if the soul is troubled by scruples, this Confession should be entirely prohibited. As for ordinary Confession, some souls of a more delicate conscience are accustomed to confess daily; but, generally speaking, it is sufficient for spiritual souls, especially those prone to scruples, to confess once, or at most twice, a week. But when any of these are burdened by some slight fault, and do not have the opportunity to confess, Father Barisonius, in his treatise on Holy Communion, citing the authority of Saint Ambrose and many other authors (which Saint Francis de Sales also suggests in one of his letters), says that they should not omit Holy Communion; for the Sacred Council of Trent teaches that for the remission of venial sins, there are also other means, such as acts of contrition and love, and therefore it is better to purify the soul from that fault by using these means, than to deprive oneself of Holy Communion because of the absence of a confessor. And a wise director used to say that sometimes it is far more beneficial for certain timid souls to prepare themselves for Holy Communion through their actions, than with Confession, and often it happens that the soul then prepares itself with more fervent acts of contrition, confidence, and humility. 29. — As for Holy Communion, we do not speak here of the obligation of pastors of souls not to deny Holy Communion to any subject who is not a public sinner, and whenever he reasonably requests it. We have said enough about this in the book (1) in which we saw that Innocent XI, by a certain decree, had ordered the frequent use of Holy Communion to be left to the prudence of confessors; therefore, without an evident reason, I do not know how pastors can, with a safe conscience, deny Holy Communion to those who ask for it. And it should be noted that in the aforementioned decree, it is forbidden for bishops to prescribe to their subjects the days on which they should receive Holy Communion. But we speak here only of the way in which confessors should behave in granting Holy Communion to their penitents. Some err through excessive leniency, others through excessive rigor. There is no doubt that error exists, as Saint Pius V observes in his golden book on the Synod (2), Moral Works, Book 6, n. 264.

[*Latin ed. p. 731*]

ON THE FREQUENCY OF THE SACRAMENTS. 719. It is not permissible to administer frequent Communion to those who often fall into grave sins, and who are not concerned about performing penance and amending their lives; nor to those who approach Communion with a desire for venial sins, without any desire to free themselves from them. It is indeed sometimes advisable to administer Communion to those who are in danger of falling into mortal sins, so that they may receive strength to resist; but

with respect to those persons who are not in such danger, and who, on the contrary, habitually commit deliberate venial sins, and in whom there is no sign of amendment, nor any desire for amendment, it is best not to allow them Communion more than once a week; indeed, it may sometimes be advisable to deny them Communion for the entire week, so that they may become more aware of their faults, and develop greater reverence for this Sacrament (1). This is especially true, because the common opinion holds that receiving the Eucharist with a light, actual sin, or with a desire for it, constitutes a new fault, due to the irreverence shown to the Sacrament. Some cite the decree of Saint Anacletus (2), in which it is stated: "After the consecration, let all communicate who have not wished to abstain from the limits of the Church; thus the Apostles decreed, and thus the Holy Roman Church holds." But first, this is denied by Suarez and others, that such a precept of the Apostles ever existed. Secondly, this decree, as the gloss there testifies, and the Roman Catechism (3), did not obligate all the faithful, but only the ministers assisting at the altar. And finally, even if the decree did obligate all, it is certainly now obsolete. 30. — On the contrary, some directors are certainly mistaken, and are far from the spirit of the Church, when they, without any regard for the needs or progress of souls, indiscriminately deny frequent Communion, not for any other reason than because it is frequent. The Roman Catechism (4), explaining the desire of the Council of Trent that all those present at the Mass should communicate, teaches that it is the duty of the parish priest diligently to urge the faithful to Communion, not only frequently, but also daily, instructing them that just as the body needs daily food, so too does the soul. I omit here the citation of the authorities of the Saints and Doctors, which are entirely in conformity with this, because they are found noted in many books that treat of frequent Communion. It is sufficient to know from the Roman Catechism, in the place cited above, and from the decree of Innocent XI, mentioned in our book (5), that the frequent use of Communion, indeed daily Communion, has always been approved by the Church and by all the Fathers, who, as a learned author demonstrates, whenever they noticed the practice of daily Communion to be cooling, used every diligence to restore it. And in the third synod of Milan, held under Saint Charles Borromeo, it was ordered that the parish priests should exhort the faithful in their sermons to this frequency of Communion; and furthermore, it was imposed upon the bishops of the province to forbid those who preached the contrary, and to severely punish them, as sowers of scandal, and as those who contradicted the sentiment of the whole Church. Moreover, in the aforementioned decree of Innocent, it is ordered that the bishops should take the utmost care that Communion, even daily Communion, should not be denied to anyone, and that they should strive, as is fitting, to foster this devotion in their subjects. Some more rigid spirits openly admit (2) Lib. 6. n. 270. and are lax in practice in the confess. tom. 8. c. 9. 2 4. n. 149. — (3)

Can. Peraeta 2. dist. 2. de Cons. — (4) Cat. Rom. de Sacr. Euch. p. 2. n. 65. — (4) Ibid. n. 64. — (5) Lib. 6. n. 254.

[*Latin ed. p. 732*]

720 APPENDIX I. SPIRITUAL DIRECTION. It is indeed desirable to receive Holy Communion daily, but it is said that a proper disposition is required for this. However, we desire to know from them what they understand by the term "proper disposition." If they mean a worthy disposition, then who ever should approach the Eucharist more than Jesus Christ Himself? Only Jesus Christ worthily received the Eucharist, for only God could worthily receive God. But if they mean a suitable disposition, then it has already been stated that those who have actual venial sins, or a tendency towards them, without a desire for amendment, should be denied frequent Communion. But if we speak later of those who, having removed even the inclination towards venial sins, and having overcome the greater part of their evil inclinations, have a great desire to receive Communion, then Saint Francis de Sales (1) says that these, with the prior advice of their director, can rightly receive Communion daily. And Saint Thomas (2) teaches that when a soul experiences the benefit of Communion in growing in divine love, and does not diminish reverence for the Sacrament, it should not abstain from Communion, even daily. Indeed, the very words of the Saint are: "If anyone has experienced that from daily Communion, the fervor of love increases, and reverence is not diminished, such a person should receive Communion daily." 31.— And although abstaining from Communion on any given day is also a virtue, it is the common opinion of the Doctors, as Father Granata states in his treatise on Communion, that it is better to approach Communion daily out of love, than to abstain out of reverence. And this is confirmed by the same Saint Thomas (3), who says: "And therefore both pertain to the reverence of this Sacrament, both that it be taken daily, and that sometimes it be abstained from. However, love and hope, to which Scripture always calls us, are preferred to fear." Indeed, Father Barisonius rightly says that he who approaches the Eucharist with a desire to grow in divine love, also performs an act of reverence towards Jesus Christ; indeed, he performs a positive act, while he who abstains performs only a negative one. Many saints, who had great reverence for this Sacrament, did not abstain from daily Communion, as was the case with Saint Gertrude, Saint Catherine of Siena, Saint Theresa, Blessed Joan of Chantal, and others. And to those who assert that such saints no longer exist today, the same Father Barisonius rightly replies: "To suppose this is to presume that the hand of the Lord is now shortened." The Very Reverend Father of Avila does not hesitate to say that those who condemn those who frequently approach the Eucharist are performing the work of the devil. 32.— However, considering the doctrines mentioned above, it seems that a director cannot, without scruple, deny frequent, and even daily, Communion (except, speaking gen-

erally, one day in each week, as some prudent directors do, and except for the time when penitents may wish to be deprived of Communion, to test their obedience, or humility, or for some other just reason) to certain souls who desire it in order to progress in divine love; always provided that they are truly and completely detached from any inclination towards venial sin, and that they devote themselves to much mental prayer, and strive to attain perfection, and do not relapse into sins, even venial sins, entirely voluntarily; for as Saint Prosper says, this is perfection which can be attained in this.

(1) Introd. alla vita dirota c. 20.

(2) S. Th. 4. Sent. d. 12. q. 3. ad solut. q. 2.

(3) P. 3. q. 8e. g. 10. ad 3.

[*Latin ed. p. 733*]

ON THE FREQUENCY OF THE SACRAMENTS. 721. Given human frailty, life should be lived with prudence. And when a confessor recognizes that frequent communion would be beneficial to certain individuals, Innocent XI states in his decree, that there is nothing to prevent this, even for merchants and married people. His words are: "The frequent approach to the most holy Eucharist should be left to the judgment of confessors, who, considering the purity of conscience, the fruit of frequent reception, and the progress in piety of laypeople, merchants, and married individuals, and foreseeing that it will be beneficial to their salvation, must prescribe it to them." 33. — And although some soul may occasionally fall into a venial sin through mere weakness, but quickly afterwards feels remorse and proposes amendment; if, then, that person desires to receive communion to gain strength from the sacrament, lest they fall, and to progress on the path of perfection, why should communion be denied to them? Alexander VIII condemned the proposition in *Baii* 22, which stated: "Those who claim the right to receive communion before they have made amends for their sins are to be considered sacrilegious." And proposition 23: "Similarly, those in whom there is not yet the purest love of God, and who are devoid of all zeal for the mission, are to be kept away from the holy communion." The holy Council of Trent calls this sacrament "the antidote by which we are freed from daily sins, and by which we are preserved from mortal sins." Indeed, for the purpose of preserving the soul from relapses, the apostles granted frequent communion to the early Christians, among whom, without doubt, there were also imperfect, and perhaps even more imperfect individuals, as is argued from the Epistles of SS. Paul and James. The Holy Church (in the postcommunion for the 23rd day after Pentecost) prays "that whatever is vicious in our mind may be healed by the medicine of this sacrament." Therefore, communion was instituted even for the imperfect, so that they may be healed by the power of this food. It should also be noted what St. Francis de Sales says in his

Philothea (1) on this matter: "If they ask you why you communicate so frequently, answer them that two kinds of people should communicate more often: the perfect, in order to maintain their perfection; the imperfect, in order to be able to attain perfection. The strong, lest they become weak; the weak, that they may become strong; the sick, that they may be healed; the well-intentioned, lest they become infirm. And as for you, being imperfect, weak, and frail, you need frequent communion. Tell them that those who are not involved in worldly affairs should communicate more often, because they have the opportunity; those who are engaged in such affairs, because they need communion." Finally, St. Francis concludes, saying: "Come more often, O Philothea, to the Eucharist, indeed as often as your director advises, and believe me that the hares in our mountains turn white not by any other means than because they eat only snow; and you, by eating the purity in this sacrament, will become entirely pure." Also, Father Granata, in his treatise on communion, says: "A man should not abstain from this sacrament because of his own unworthiness; for this treasure has been reserved for the poor, and this medicine for the sick; and therefore, (he adds) no one who knows himself to be imperfect should keep himself far from this remedy, if he truly desires to be healed." Indeed, the same author says that the more a person recognizes himself to be weak, the more he should approach this food of the strong. This is entirely in agreement with what St. Ambrose says (2): "He who always sins, must always have..." (1) *Vita derota* c. 21. — (2) *Lib. 4 de Sacr.* c. 6. 46

[*Latin ed. p. 734*]

722 APPENDIX 1. DIRECTIONS FOR SOULS. "medicine." Ibid. (1): "Every day you sin, every day take [the Sacrament]." 34. — Furthermore, St. Thomas teaches (2) that the effect of the Sacrament, as regards the increase of grace, is not hindered by venial sins, provided they are not committed during Holy Communion; and although these [sins] do hinder in part, they do not hinder the entire effect of the Sacrament. This opinion is commonly held by Soto, Suarez, Valentia, Vasquez, and Coninc, and many others apud Salmant. (3). Moreover, several more authoritative authors (4) hold that this Sacrament remits venial sins of which the soul has actual knowledge; and this is in accordance with what the Roman Catechism states (5): "It is not to be doubted that the Eucharist remits, and the lighter ones, which are commonly called venial sins, are forgiven; for whatever the soul has lost through the ardor of concupiscence, the Eucharist restores, by cleansing it of these lesser faults." At least, as the Angelic Doctor says (6) concerning Communion, the act of charity is excited through Communion, by which sins are forgiven: "He [the soul] is excited in this Sacrament, through whom venial sins are forgiven." 35. — But if it is later discovered that, despite frequent Communion, the soul makes no progress on the path to perfection, nor improves from deliberate sins, even if they are venial, and

if it clings even to sensual pleasures in seeing, hearing, eating, and dressing with vanity, then certainly the use of Communion must be restricted, even so that it may begin to seriously consider its own amendment, and to strive for its spiritual perfection. However, it should be noted that, according to St. Thomas (7), in order for one to approach Communion, "it is required that he approach with great devotion"; nevertheless, it is not necessary that this devotion be intense or openly felt; it is sufficient for the director to discern in the depths of the will of the penitent some eagerness to do whatever pleases God. He who abstains from Communion because he does not feel within himself a great fervor, says the learned Gerson, is like one who, feeling no warmth, would not want to approach the fire, because he experiences no warmth. Therefore, Father Granada, with Cajetan, teaches that those who are timid and, out of excessive fear of their unworthiness, omit Communion, do great harm to their own progress. And St. Lawrence Justinian says that it is not necessary for the soul to feel, or openly discern, an increase of fervor in order to pursue Communions, because this Sacrament often works without us even noticing it. And St. Bonaventure says (8): "Although tepid, yet confidently approach, trusting in the mercy of God, for he who considers himself unworthy, should think that he needs the physician all the more, the more he feels himself to be sick; and you seek to join yourself to Christ not that you may sanctify Him, but that you may be sanctified by Him." And afterwards he adds: "And the Holy Communion should not be omitted, if at times a man does not feel special devotion, when he strives to prepare himself for it, or if, even in the act itself, or afterwards, he feels less devotion than he would like." Therefore, the saint rightly says that even if the soul experiences less devotion after receiving the Eucharist than before, it should not omit it. Therefore, just as it is advisable for the soul to mortify itself by frequent Communion when it feels a strong inclination towards it, so too... (1) Book 5, chapter 4, on the Sacraments. (2) St. Thomas, 3rd part, question 79, article 8. (3) Book 6, article 270, Question II. (4) Number 269, section II, Effects. (5) On the Eucharist, page 2, number 54. (6) 3rd part, question 79, article 4. (7) 3rd part, question 80, article 10. (8) On the Progress of Religious Life, chapter 78.

[*Latin ed. p. 735*]

METHOD FOR PERFECT LIFE. 723 by postponing it (especially if it is noted that this prohibition causes disturbance; for such distress is a sign of pride, which truly makes it unworthy): Thus, conversely, when one feels reluctance and boredom towards receiving the Eucharist, it is advisable to encourage frequent communion, so that one may draw strength from the Sacrament. 36. — Oh, if only, I conclude, oh, if only more souls in the world could be found of this kind (who are called irreverent and rash by some who are too rigid), who, hating even minor sins, would seek to commu-

nicate not only frequently, but even daily, with a true desire to improve themselves and to progress in divine love: for if this were the case, Jesus Christ would be loved far more in the world. Experience demonstrates to all those who engage in the ministry of guiding souls, as I myself have experienced, that those who approach communion with a sincere desire greatly benefit; and the Lord draws them to His love in a wonderful way, although He often does not make this manifest to them, for their greater good, and sometimes He leaves them in darkness and desolation, and without any perceptible devotion: for these souls (as St. Theresa and St. Henry Suso teach), there is no more effective remedy than frequent communion. Therefore, let the confessor encourage communion whenever a true desire is demonstrated; and whenever he observes the soul progressing in spirit through the benefit of communion. He should also encourage the soul to spend time in thanksgiving after communion, for as long as possible. Very few directors diligently do this, that is, to impress upon their penitents to give thanks for a certain period of time after receiving the Eucharist; and the reason is, because very few priests remain in thanksgiving after the sacrifice of the Mass with Jesus Christ; and therefore they are ashamed to suggest to others what they themselves do not do. Thanksgiving should ordinarily last for a full hour; at least it should last for half an hour, in which the soul exercises itself in loving and praying. St. Theresa says that after communion, Jesus is present in the soul as on a throne of mercy, so that thanks may be given to Him, saying: "What do you want me to do for you?" And elsewhere: "After communion, let us not lose this most excellent opportunity of business." His divine Majesty does not usually fail to repay hospitality if He is well received in the soul. He should also encourage frequent spiritual communion: this practice is highly recommended by the Council of Trent. To make spiritual communion (says St. Theresa) is very useful. Do not neglect it; for here the Lord will experience how much you love Him. § V. Method of life for a religious who wishes to be guided along the path of perfection. 37. — Above all, it must be understood that what I will explain below should be followed whenever it does not impede the penitent due to some impediment of health, duty, or obedience; and it must also be understood with the permission of the spiritual father, and also of the monastic superior, with regard to external mortifications which are exposed to the eyes of others. And first, concerning prayer. 1. To dedicate at least three hours to mental prayer, one in the morning, another in the evening, and another after communion. 2. To visit the Blessed Sacrament and the Blessed Virgin Mary for half an hour, or at least a quarter of an hour. In these prayers, one should repeatedly renew their vows.

[*Latin ed. p. 736*]

724 APPENDIX I. DIRECTIONS FOR SOULS SPIRIT. day, if he has already made his profession; or to those to whom he may have made some

promise. 3. Recite the Rosary, consisting of at least five decades, along with other vocal prayers: but this is not always advisable, because when there are many present, they are recited with little devotion, they tire the head, and thus hinder mental prayer. 4. Make frequent use of ejaculatory prayers, such as: "Deus meus et omnia!" "How good you are, my God!" "I love you, Jesus, my love, who died for me!" "Lord, why are you not loved by all?" "Oh, that I had never offended you!" "I want, Lord, whatever you will." "When will I see you, and love you face to face?" "Behold me, and do with me whatever you will!" The director should strongly encourage such expressions of love, and the soul should make them with great fervor. 5. Add to prayer, a half-hour of spiritual reading, reading the works of Rodriguez, or of Saint Ignatius, or instructions for religious, or another book that deals with virtues: or read the lives of the Saints, the reading of which is perhaps more useful than all the others. Secondly, attend daily Communion, except for one day in each week. But during Novenas at the Spiritus Sancti, at the Nativity of the Lord, and of the most holy Virgin Mary, and of the patron saints, he should receive Communion daily, and should also receive Communion spiritually at least three times daily. Thirdly, regarding mortifications: 1. Daily, perform a flagellation without drawing blood for about a quarter of an hour, and with blood, twice, or once a month. 2. In the morning, wear an iron chain until after lunch; after lunch, wear a small chain on the arm. However, never wear a chain around the waist, nor a cilice made of horsehair, because these are very harmful to health. 3. Fast on bread and water on Saturdays and on the vigils of the seven feasts of Mary, if his health permits, or at least use only bread as food on those days. At the evening meal, ordinarily do not eat more than eight ounces of food, unless there is some extraordinary necessity; abstain from fruits on Wednesdays and Fridays, and during the Novenas mentioned above, in which he can also abstain from some other portion of his usual food; and when eating, mix some bitter herb with the food, but never ashes. Eat nothing outside of meals; for it is enough, comparatively speaking, to practice the aforementioned abstinence daily, than to fast twice or three times a week. Sleep should not extend beyond six hours; always, truly, to five, because sleeping too much is harmful to the head, and hinders other spiritual exercises. 4. Observe silence for three hours of the day; this is to be understood as refraining from unnecessary words; but it is always beneficial to speak very little. General instructions for perfection. 38. — I. Place all his trust in God, and completely distrust himself and his own good intentions. A firm resolution is to overcome oneself, and to give oneself strength in all circumstances. Saint Theresa says: "If the defect does not come from us, let us not fear that God will withhold from us the help necessary for our sanctification." II. Be careful to avoid even the smallest deliberate fault, or one knowingly committed. "God deliver you," says the same Saint, "from even the smallest deliberate sin." And she adds: "For the

demon, through the means of the smallest things, makes breaches through which great things enter." III. Do not be saddened after having committed faults, but quickly humble yourself and flee to God, with a brief act of contrition, and with the resolution to remain in peace.

[*Latin ed. p. 737*]

METHOD FOR PERFECT LIFE. 725: To forgive; and thus to conduct oneself always, even if one should fall a hundred times a day. And in this, Saint Theresa warns against communicating one's own temptations to imperfect souls, because in doing so, harm is caused both to oneself and to others. IV. To detach oneself from all relatives, things, and pleasures; otherwise, says Saint Theresa, "the soul, not detaching itself from worldly pleasures, will not, after much time, detach itself from the way of God." To avoid familiarity with people of the opposite sex, however religious they may be: for often the devil introduces certain impure affections with them, presenting them as spiritual. See the notes in the last section, no. 54. Above all, one must renounce one's own estimation and one's own will, indeed, even spiritual things, such as prayer, Communion, and mortifications, when obedience does not permit it. In one word, one must banish from the heart everything that is not God, and that is not according to God's greatest pleasure. V. To rejoice with the spirit whenever one is seen to be scorned, ridiculed, and considered the most worthless of all. Oh, how beautifully that soul prays which willingly embraces contempt! Especially in communities, where this virtue is most necessary; consequently, one must foster a special affection for one's enemies and persecutors, serving them, doing them good, honoring them, at least blessing them and commending them especially to God, as the saints were accustomed to do. VI. To cultivate an ardent desire to love God and to please Him. Saint Theresa says: "The Lord is so delighted by desires, as if they were demanded for execution." Without this desire, the soul will not progress on the path to perfection, nor will God grant it very special graces; the same saint says: "Usually, God does not bestow very special favors unless to those who have long desired His love." And this desire must always be joined with a determination to do all that one can to please God. The aforementioned Saint says: "The devil fears a great soul most of all." And elsewhere: "The Lord demands nothing from us except a firm determination, and He Himself will perfect the rest." It is also necessary to foster a supreme affection for prayer, which is the furnace in which divine love is kindled. All the saints, because they loved God alone, also loved prayer alone. It is also necessary that one ardently desire paradise: for in heaven, souls love God with all their strength, which no one can achieve on earth; and therefore, God wants us to desire this kingdom most ardently, which Jesus Christ acquired for us with His blood. VII. To have great conformity to the divine will in all things, contrary to one's own appetite, and to offer oneself to God many times a day. Saint

Theresa used to do this fifty times a day: "Progress," says the Saint, "does not consist in seeking greater enjoyment of God, but in fulfilling His will." And elsewhere: "True union consists in uniting our will with the divine will." VIII. To render exact obedience to the rules, to superiors, and to one's spiritual director. The Venerable Father Vincent Caraffa said: "Obedience is the queen of all virtues; for all virtues obey obedience." And Saint Theresa says: "God demands nothing from a soul that has proposed to love Him, except obedience." True obedience, however, consists in obeying quickly, faithfully, readily, and without any judgment, asking nothing.

[*Latin ed. p. 738*]

726 APPENDIX II. ON ASSISTANCE TO THE DYING. To act according to reason, considering how often a commanded action is not certainly sinful, as say the Saints Bernard, Francis de Sales, Ignatius of Loyola, and all masters of the spiritual life; and in doubtful matters, to choose that which is presumed to have been commanded by obedience; and when such presumption cannot be upon had, to choose that which is more contrary to our inclinations. This is that which Saint Francis inculcated so often. Saint Xavier and Saint Ignatius were accustomed to say that it is far more profitable for the soul to be a friend of mortification for a single quarter of an hour than to be without mortification for many hours. IX. To always attend to the divine presence. Saint Theresa says: "Every evil comes from the fact that we do not consider God to be present." He who truly loves never forgets the object of his love. To maintain the memory of this divine presence, it helps to carry a special sign in practice, or to have something of the kind within the room. Above all, it is necessary to foster this presence, frequently during the day, by repeating acts of love towards God, and by asking for divine love, e.g., "My God and all. I love you with all my heart. I give myself entirely to you. Do with me what you will. I desire nothing but you and your will. Give me your love, and I am rich enough." It must be noted, however, that these acts must be performed without any force, and without desiring any sensible consolation; but with a certain sweetness and pure will to please God alone. Saint Theresa said: "Let us not fear being abandoned by God, even after a single glance towards his memory." X. To direct the intention of pleasing God in every daily action, whether spiritual or corporal, by saying: "Lord, I do this only to please you." A right intention is called the alchemy of the spiritual life, which makes all actions, even the most humble, golden. XI. To perform certain spiritual exercises for eight or ten days: withdrawing oneself, as much as possible, from all conversation and duties that bring distractions, so that one may be only with God. Similarly, to dedicate a day to oneself each month. To devoutly celebrate novenas for the Nativity of the Lord, the Holy Spirit, the seven feasts of Mary, Saint Joseph, one's guardian angel, and one's patron saint. During these novenas, one can daily approach Holy Communion, praying

for an hour, or at least half an hour, more than usual. To recite some other vocal prayers, but not many, because it will be far better to practice a certain number of acts of love, or similar things. XII. To have a special devotion to Saint Joseph, one's guardian angel, one's patron saint, and especially to the most blessed Virgin Mary, who is called by our Church the life and our hope, for it is morally impossible for a soul to make much progress in perfection without a particular and tender devotion to the most holy Mother of God. APPENDIX II. § I. Admonitions to the priest. § II. Remedies against temptations. § III. Motives and affections. § IV. Observations concerning the last sacraments. § V. Admonitions concerning the agony.

[*Latin ed. p. 739*]

ADMONITIONS TO THE PRIEST ATTENDING. 727 death. § VI. Affections that may be suggested during the time of agony and expiration. § VII. Signs of impending death. § VIII and following. Prayers, Christian actions, and blessings. There is no work of charity so pleasing to God, and which contributes more to the salvation of souls, as to assist those in the extreme danger of death, so that they may die piously: for at the time of death (upon which the eternal life of each person depends), the powers of hell are stronger, while the infirm are weaker. God, in order to show how pleasing He finds the assistance given to the dying, often showed to St. Philip Neri angels assisting religious ministers attending to the sick. And this is not only the duty of pastors, to whom the care of souls belongs by office, but also of all priests. However, the Roman Ritual, speaking especially of pastors, says that a principal part of their duty is to care for the sick; therefore, it wants them to, as soon as they learn that one of their parishioners is sick, not wait for the sick person to summon the pastor, but rather for the pastor himself to visit the sick person; and this not only once, but more frequently, if the sick person also appears to be suffering spiritually. If, however, he is legitimately hindered, he should at least provide for this by means of another priest, provided that this priest is pious and prudent; for some priests, in exercising this ministry, are more harmful than helpful, both to the sick person and to the sick person's family, whose well-being the attending priest must also consider. The Ritual also warns that if the priest is absent, the pastor will see to it that this is provided for by some pious lay person, endowed with Christian charity, who will be present with the sick person, offering holy words. § I. Admonitions to the priest attending. I. The priest should discreetly inquire of the doctor whether the illness is mortal. I say discreetly, because it is a deplorable practice of some doctors to deceive the sick, so as not to distress them or their relatives, almost as if the sick person were obligated to confess (which, when there is danger, they should impose upon them), it would be the same as announcing death. II. He should inquire from relatives, friends, and even from the sick person himself, about their nature, character, and defects; also, about what

indulgences they have enjoyed, and especially if they are obligated to make restitution for any good or reputation: if they have hatred or a wicked friendship, so that he may be able to offer them a remedy suitable to all. He should be careful not to mention to the sick person people they hate, or those they love impurely, unless he is compelled to do so by necessity. After having provided everything necessary for the remission of sins, he should not ask the sick person why or how they have harmed anyone, and if the sick person speaks of this, he should try to divert the conversation to another topic. And likewise, if there is no urgent need, he should not say a word about lawsuits, good children, or other relevant matters. III. Therefore, after having determined that the illness is dangerous, he should not immediately speak to the sick person about confession, but should gently inquire about their illness, their pains, and how they are feeling. He should then encourage them to conform to the will of God, and to join their sufferings to Christ suffering on the cross, and to patiently bear them as satisfaction for their sins. And thus, gradually, and with due prudence, he should lead them, by asking when they last confessed, to confession. He should remind them to place all their hope in God, who is able, if He wills, to restore them to their former state.

[*Latin ed. p. 740*]

728 APPENDIX II. ON CARE FOR THE DYING. to restore health. But at the same time, he should gradually make the sick person aware of the danger of their illness. He should especially warn them not to place complete faith in doctors and relatives who may conceal the severity of the illness from them, so as not to cause them distress. He should say that it is wise to foresee the future. He should encourage the sick person to receive the Sacrament of Reconciliation while their mind is still lucid, which will benefit their spiritual health (if it is beneficial for their physical health as well). Belluacensis recounts the story of a dying man who, immediately after confessing his sins, rose from his bed unharmed. Similarly, Cantipratensis narrates that a certain knight, after many medicines had failed to help him, was immediately cured by the power of confession. However, if the sick person desires to delay, and there is no imminent danger of death, lethargy, or delirium, he may grant them this. He should, however, ensure that the sick person sets a specific time for confession, such as evening or the next day. If, however, there is imminent danger, he should remind them, as did St. Augustine, that God does not promise to wait for sinners, but only to have mercy on them if they repent: "He has not promised tomorrow; perhaps He will give it, perhaps He will not." If, even with these warnings, the sick person cannot be persuaded to confess, the priest should never abandon them, but should sometimes use arguments of fear, and sometimes arguments of hope, to awaken them, and he should ensure that both private and public prayers are offered to God for the salvation of this person. IV. If the

illness worsens, he should encourage the sick person to make appropriate arrangements for their domestic affairs; this is beneficial for the peace of the family, and even more so if it alleviates their conscience. However, the priest must be very careful not to become involved in any matter of profit. If the sick person has needy brothers or sisters, he should remind them that they are bound by a serious obligation to leave them their possessions, at least what is sufficient to meet their needs. However, this obligation does not seem to extend to more distant relatives. Note what is said in the work, volume 3, book 3, number 946. If the sick person wishes to leave something for their soul, he should advise them not to impose this burden on their heirs, because experience shows that pious bequests are rarely fulfilled: but rather, he should encourage them to leave a sum of money for sacrifices or for some other pious work. The priest should be careful not to advise the sick person to do anything that could harm others, since it is not fitting for the ministers of Christ to stir up hatred against themselves. V. When speaking with the uneducated, while suggesting Christian actions, he should always speak in the Italian or vernacular language. With the educated, he should use more refined words and, on occasion, even short phrases taken from Scripture, but in Latin. However, the Ritual warns that the priest should not speak too much or use too many phrases, as some do, lest he confuse the sick person rather than help them. Father Recupitus, of the Society of Jesus, recounts that, when near death, he understood nothing of what was said to him, but only a certain annoying murmur; so that, in order not to further distress him, he was forced to ask them to pause for a moment in their speaking. VI. In addition to the small images of the Holy Cross and the Blessed Virgin, which he has taken care to place near the sick person, he should also, if possible, place larger images of the Mother of God and the Redeemer within their sight, so that the sick person, no matter where they turn, can see them and commend themselves to them. VII. He should also take care to remove any dangerous objects from the sick person's room.

[*Latin ed. p. 741*]

REMEDIES AGAINST TEMPTATIONS. 729. Images of questionable decency, and especially persons who may in some way present an occasion for sin, should be regarded as weapons and removed, not only from the sickroom, but from the entire house. And when the sick person appears to be near death, the priest should drive everyone away from his room, except for one or two who are needed to be present. Furthermore, he should strictly forbid anyone to enter the sickroom who might give cause for passion. § II. Remedies against temptations. The principal remedies against temptations are to frequently invoke the names of Jesus and Mary, and to protect oneself with the sign of the cross. However, for certain special demonic attacks, it is advisable to note the following. I. Against temptations

of faith. This terrible temptation particularly afflicts those who have led a dissolute life and cling to their own judgment, especially if they are learned men. Here, it must be diligently noted that if a demon suggests any doubt or subtlety to them concerning faith, they should immediately, with steadfast spirit, respond in general terms: "I believe what the holy Church believes, which believes and confesses the truth." The priest should also encourage the sick person to give the greatest thanks to God for having been deemed worthy to be received into the bosom of the Church from infancy; and therefore, to profess that he wishes to persevere in that faith until the end of his life. However, the most effective method, and the most useful for repelling such temptations, will be to divert the mind and to evoke other various acts, namely, contrition, hope, charity towards God, and the like. Concerning this, Bellarmine recounts that a certain doctor, while arguing with a demon about a certain article of faith while near death, was deceived and succumbed, and died. If the temptation persists, show the sick person that the arguments of our faith (which are inherently holy and deeply rooted, having been spread throughout the world by poor fishermen, and confirmed by so many miracles and by the blood of so many thousands of martyrs who gave their lives for it) are clearly evident, and manifestly prove it to be true, although the things that it teaches we now see through a mirror and in an enigma: for if the mysteries by enough instructs us were evident, where would be the merit of faith? For faith is called faith because the things it teaches are obscure and not apparent. Hence it is said: "Blessed are they that have not seen, and have believed." Jesus saith to him. II. Against the temptation of Despair. This is the principal temptation, because hell attacks the sick with greater intensity; therefore, the priest should be wary of them speaking about divine justice, the punishments of the damned, and exaggerating their sins; but rather, he should suggest to them arguments of trust in the mercy of God, the passion of the Savior, divine promises, and the intercession of the Mother of God. First, the motive of our hope is the divine mercy, since God is called God, and is truly the Father of mercies (2 Corinthians 1:3). He also comes to those who do not seek Him: "They have sought me that before asked not for me, they have found me that sought me not. I said." Isaiah 65:1. He desires to save us more than we desire salvation. Therefore, He rightly complains of those whom, even when they flee from Him, He desires to embrace, as St. Bernard says: "He seeks to embrace those of whom He complains that they are fleeing from Him." He is entirely inclined to forgive: "Let the wicked forsake his way, and the unjust man his thoughts, and let him return to the Lord, and he will have mercy on him, and to our God." Isaiah 55:7. He protests that He does not will the death of the sinner: "For I desire not the death of him that dieth, saith the Lord God, return ye and live." Ezekiel 18:32. He says that when the sinner detests his sins, He forgets all their iniquities. "But if the wicked man turn away from his wickedness, and do that which is lawful

and right..."

[*Latin ed. p. 742*]

730 APPENDIX II. CONCERNING ASSISTANCE FOR THE DYING. "I will remember." Ezekiel 18:21 and 22. After these divine testimonies, who could ever doubt the mercy of God? A single act of penance suffices to atone for countless sins. The publican, scarcely uttering a word, said, "Have mercy on me, a sinner," and was justified. The prodigal son, upon returning, stood at his father's feet, and the father embraced him. David, having said, "I have sinned against the Lord," Nathan replied, "The Lord also hath forgiven thy sin." 2 Kings 12:13. A second reason is the passion of Jesus Christ, who declared that He came to earth for no other purpose than the salvation of sinners: "For I came not to call the righteous, but sinners to repentance." Matthew 9:13. He also promises that He will not reject anyone who comes to Him: "All that come to me, I will not cast out." John 6:37. And in Matthew 18:12, He says that He is the good shepherd who seeks out the lost sheep, and when He finds one, He rejoices, carries it on His shoulders, and treats it with greater affection, as He did with Saint Mary of Egypt, Blessed Angela of Foligno, Saint Margaret of Cortona, and other penitents. Therefore, he who has a right intention should not fear being condemned by the Lord, who, in order not to condemn us, did not hesitate to condemn Himself to the death of the cross. A third reason is the divine promises. In many places in the Gospel, it is promised that those who ask will receive divine grace: "Ask, and you shall receive." John 16:24. "And in that day you shall not ask me any thing. Amen, amen, I say to you: if you ask the Father any thing in my name, he will give it you." John 16:23. And here, the words apply not only to the righteous, but also to sinners, according to the text in Matthew: "For every one that asketh, receiveth." Matthew 7:8. Therefore, it is sufficient to ask God for salvation, so that it may certainly be obtained. "Teth. The Lord is good to them that hope in him, to the soul that seeketh him." Lamentations 3:25. A fourth reason is the intercession of the saints, and especially of the Theotokos, whom God desires to be our salvation, our life, and our hope, and to whom we should say: "Refuge of sinners, pray for us; Life, our hope, hail." Therefore, the Blessed Virgin is rightly called by Blosius, the hope of the despairing; and by Saint Ephrem, the helper of the afflicted. The same Mother of God revealed to Blessed Bridget that, just as a mother, seeing her son among the swords of her enemies, takes him into her protection, so she cares for her devoted ones, protecting them from the torments of demons and they commend themselves to her. Furthermore, she said that when a sinner approaches her, she does not examine his merits, but rather considers with what intention he comes. And God Himself revealed to Blessed Catherine of Siena that Mary had granted that no sinner who turns to her could ever be taken away by a demon. III. Against the temptation of vain glory. Saint Bernard says that

vain glory is a certain arrow that penetrates lightly, but wounds deeply, especially if the person has a sensitive conscience. Therefore, if a priest ever noticed that a dying person considered himself too secure about his salvation, because he trusted too much in his own works, he should tell him that all our sins are our own, but that all good things are received from God, as it is written: "For who distinguisheth thee? Or what hast thou that thou hast not received, and if thou hast received, why dost thou glory, as if thou hadst not received it?" 1 Corinthians 4:7. And since it is certain that no one can have infallible certainty of his eternal salvation and divine grace (For man knows not whether he is worthy of love or of hatred. Ecclesiastes 9:1), everyone should always work for his salvation with fear and trembling, as the Apostle says. Philippians 2:12.

[*Latin ed. p. 743*]

REMEDIES AGAINST TEMPTATIONS. 731 IV. Against the temptation of impatience. If someone afflicted by the torments of illness becomes impatient, let them be shown how much the martyrs suffered for the sake of Christ, enduring torments, being flogged, flayed, burned, and slaughtered. And especially, let all that innocent Jesus endured for our sake be brought before their eyes. Let the sick person be told that the pains of illness cannot be avoided; therefore, if they suffer them unwillingly, they will fare poorly both now and in the next life; but if they accept them willingly for God, not only will they be relieved from the pain of the illness here, but they will suffer fewer torments in purgatory there, and will be rewarded more in heaven: "Amen, amen, I say to you, that you shall lament and weep, but the world shall rejoice." John 16:20. Let them be reminded that the torments of the last days complete our eternal crown; for, as Saint Bonaventure says, patiently enduring punishments is a more perfect work than all other works, according to James: "And patience hath a perfect work." James 1:4. Thus, God treats His friends in this life, for the cross is a sure sign of our predestination. Saint Clara lived for 28 years, afflicted by pains. Saint Lidovina endured the burden of infirmities for 38 years. And the Divine Mother, one day, said to Saint Bridget, who was suffering from illness: "You know why your infirmity has lasted so long? It has lasted because My Son and I love you so much." The Apostle greatly consoles us poor travelers amidst the sorrows of this world, saying: "For that which is at present momentary and light of our tribulation worketh for us above measure, exceedingly an eternal weight of glory." 2 Corinthians 4:17. And elsewhere: "For I reckon that the sufferings of this time are not worthy to be compared with the glory to come that shall be revealed in us." Romans 8:18. Therefore, it is important to diligently encourage the sick person to conform to the will of God, not only if they suffer pain, but also if the doctors are mistaken, or if those attending to them neglect their care. Hence, frequently remind them to ask God for patience. V. To those who find it

difficult to die so prematurely, let the miseries of this life be brought before their eyes, the infirmities, the anguish of the soul, as well as the dangers of sin and damnation. Therefore, the saints so eagerly desired death. Saint Theresa said: "Alas for me, because in every moment of my life I can lose God!" Therefore, whenever the clock struck, she was very grateful that the hour of that danger had passed. The holy martyrs proceeded cheerfully to the scaffold, so that they might escape this danger more quickly and enjoy God. Hence, it is said in the Apocalypse (14:13): "And I heard a voice from heaven, saying to me: Write: Blessed are the dead who die in the Lord. From henceforth now, saith the Spirit, that they may rest from their labours. For their works follow them." In this valley of tears, let the travelers remember: "For we have not here a lasting city." Hebrews 13:14. Everyone, whether king or priest, must undergo death. Encourage the sick person to give thanks to God, that He did not allow them to die when they were in sin; and that He now prepares them to depart, fortified by the sacraments. Let them be told that, at least, death should be accepted willingly, because we escape so many minor faults, from which we cannot be free in this life. Let the sick person be told: "My brother, you must conform to the will of God, who arranges all things for our good. Who knows whether, if you lived longer, you would not lose your soul? But the sick person will say: I would like to live, in order to make satisfaction to God for my sins, and to do some good before death, since I have done nothing good so far." The priest should reply: "My son, there is no penance more pleasing to God

[*Latin ed. p. 744*]

732 APPENDIX II. ON CARE FOR THE DYING. "May they readily accept death as an expiation for their sins; for no action is more perfect than to accept death in order to fulfill the will of God."

VI. Against the temptation to cling to worldly goods and relatives. To those who dislike dying because they are too attached to their loved ones, the confessor should say: "These are not true goods, since they are fleeting and soon to fail; and if they do not fail, they are more likely to cause distress than to bring comfort." If the sick person is distressed because of their beloved wife, children, or grandchildren whom they are leaving behind, gently encourage them with these words: "My child, it is ordained for all to die; all will follow you in due course. Now, consider your own salvation, and save your soul, and you will pray for them in heaven, and you will be blessed with them eternally; but now, what is sweeter than to go to live with Jesus Christ, with the Queen of Heaven, and all the saints?" If they are distressed because they are leaving their loved ones in poverty, say to them: "Listen, my child, if you attain eternal salvation, you will be able to help your loved ones much more from heaven than you can from earth. But do not doubt, for God, who feeds the birds of the air, will not fail to provide for them." If you love them, God loves them even more."

VII. Against the temptation of hatred and vengeance. If someone is held captive by hatred because of an offense received, 1. remind them of the divine precept: "Love your enemies." Matthew 5:44. —2. Tell them that he who does not forgive cannot hope to receive forgiveness from God, who says: "Depart, you cursed." Revelation 12:15. Dogs (a symbol of vengeance) are repelled from heaven. On the contrary, God promises certain forgiveness to the sinner who forgives his offender, as in: "Judge not." Luke 6:37. Point out that if an enemy has unjustly harmed him, how much more unjustly does he harm God! Therefore, if he asks God to forgive him, how much more should he forgive his neighbor! "As the Lord has forgiven you, so forgive you also." Colossians 3:13. Finally, show him how pleasing it is to God for those who forgive injuries. Saint John Gualbert, after rebuking a fratricide, entered the church and, greeting the image of the Crucifix, saw the Redeemer incline his head towards him, as if thanking him for the forgiveness given. Saint James embraced the one who had accused him before his death. Saint Stephen prayed for those who stoned him. Saint Aloysius, King of France, invited to dinner those who had plotted his death. Saint Ambrose provided food for a long time to a certain betrayer. And our Lord Jesus Christ gave the prime example of this, when, placed on the cross, he earnestly prayed to his Father for his persecutors and those who cursed him.

§ III. Various motives and affections to suggest to the sick.

I. Motives for trust. We have already spoken about these above (in § II); the following can be added from Scripture: "No one hoped in Bomino and was disappointed." Ecclesiasticus 2:11. "And he is the propitiation for our sins." 1 John 2:2. Jesus Christ underwent death for this purpose, so that he might obtain forgiveness of sins for us. "He that spared not even his own Son, but delivered him up for us all, how hath he not also, with him, given us all things?" Romans 8:32. How then can God deny us forgiveness, when he has given us his own Son?

Affects of trust. "The psalm of David before he was anointed. The Lord is my light and my salvation, whom shall I fear? The Lord is the protector of my life." Psalm 26:1. "Into thy hands I commend my spirit." Psalm 30:6.

[*Latin ed. p. 745*]

MOTIVES AND AFFECTS, etc. 733 "Therefore, we beseech you, assist your servants, whom you have redeemed with your precious blood." "In thee, O Lord, have I hoped, let me never be confounded." "O good Jesus, hide me within your wounds." "Your wounds are my merits." St. Bernard. "My Jesus, will you deny me forgiveness, who have not denied me life and blood?" "The Passion of Jesus, you are my hope. The merits of Jesus, you are my hope. The wounds of Jesus, you are my hope. The death of Jesus, you are my hope." "Mary, my mother, save me, have mercy on me." "Our hope, hail." "Holy Mary, Mother of God, pray for me, a sinner." "Under

your protection we seek refuge, holy Mother of God."

II. Motives and affections of contrition. St. Augustine says that everyone, until the very end of life, should not neglect to lament their sins. "Enter not into judgment with your servant. Ps. 142:2. My Jesus, and my judge, spare me, before you come to judge me." "You will not despise a contributed and humble heart. O God, if I had never offended you!" "My Lord, you should not have been treated so by me, as I have acted wickedly." "Father, I am not worthy to be called your son. I have departed from you, I have despised your grace, I have lost you in return: I repent with all my heart; my God, for the love and blood of Jesus Christ, have mercy on me." "Woe to my sins, which have deprived me of God! I detest you, I abhor you, and I curse you." "My God, what evil have you done to me, that I have so offended you? For the sake of Jesus, your Son, have mercy on me." "Never, O Lord, will I offend you as long as I live; whether it be little or much that remains to me, I wish to love you." "I offer to you, in satisfaction for the insults I have inflicted upon you, my death and the pains which I will endure until death." "Lord, you deserve to punish me; I have greatly offended you. But I beg you, punish me in this life, not in another." "O Mary, obtain for me the sorrow for my sins, forgiveness, and perseverance."

III. Motives and affections of love. "My God, who are infinite goodness, I love you above all things. I love you more than myself; I love you with all my heart. My God, I am not worthy to love you, because I have so greatly offended you; but for the love of Jesus, make me worthy." "O that all would love you!" "Jesus, sweetest Jesus, I desire to suffer and die for you, who, for my sake, deigned to suffer and die." "Lord, punish me as you will, but do not deprive me of loving you: My God, save me; my salvation is to love you." "I desire paradise, so that I may love you forever with all my strength." "My God, do not cast me into hell, as I deserve: there you would be hated by me, but I do not have the strength to hate you. And what evil, my Lord, have you done to me, that you should be hated by me? Make me love you, and send me where you will."

[*Latin ed. p. 746*]

734 APPENDIX II. ON ASSISTANCE TO THE DYING. "I wish to suffer as much as you please; I wish to die in order to please you." "Draw me to you, my Jesus, and do not allow me ever to be separated from you!" "My God, make me entirely yours before I die." "When will it be that I can say: My God, I can no longer lose you." "O my God, I would like to love you as much as you deserve!" "O Mary, draw me entirely to God." "My Mother, I love you very much; I want to come to heaven, to love you eternally." IV. Motivations and affections of conformity. All our good and our life consist in conforming ourselves to the will of God, according to that which is written: "Life is in her will." Psalm 29:6. God indeed wills what is for our best good. To the Saint Gertrude, when Jesus appeared to her,

offering her death and life, she responded: "Lord, what you will, and I will." Likewise, Saint Catherine of Siena, when Jesus presented himself to her, offering her a double crown, one of jewels and the other of thorns, so that she might choose, she responded: "I choose what pleases you." Affections. "Come now, N., if God calls you to another life, are you content?" You are content. Therefore, always say: "Lord, behold me, do with me what you will. May your will be done; I desire only what you will. I wish to suffer as much as you will. I wish to die when you will." "I commend my soul and my body, my life and my death, into your hands." "I will bless the Lord in all times: for his praise, which is above all, shall endure for ever. Whether you console me, or you crucify me, my God, I love you, and I always wish to love you." "My God, with the death of Jesus, I join my death to yours, and thus I offer it to you." "O will of God, you are my love." "O good pleasure of my God, I surrender myself entirely to you as a holocaust." V. Motivations and affections of desire for paradise. Motivations. Blosius recounts several revelations from which it is learned that those in purgatory who have tepidly desired heaven are tormented by a particular punishment called by the mystic doctors the punishment of desire or longing. This present life is a prison of punishments, in which we cannot see God; hence, David rightly prayed: "Bring my soul out of prison, that I may praise thy name." Psalm 141:8. And Saint Augustine cried out: "Ah, Lord, let me die that I may see you." Saint Jerome called death his sister, and said to her: "Open to me, my sister." Indeed, death is that which opens to us the gates of paradise. And therefore, Saint Charles Borromeo, seeing the image of death depicted with a scythe in hand, ordered the painter to erase the scythe and, in its place, to paint a golden key, as the key to heaven. Therefore, it is fitting that the priest should often speak to the dying about the good things of the heavenly homeland, reminding them of what the Apostle says: "But as it is written: That eye hath not seen, nor ear heard: neither hath it entered into the heart of man, what things God hath prepared for them that love him." 1 Corinthians 2:9. Affections. "My soul hath thirsted after the strong living God." Psalm 41:3. "When will it be, my God, that I will see your infinite beauty, and love you face to face!" "In heaven I will always love you, you will always love me, we will love each other."

[*Latin ed. p. 747*]

MOTIVES AND AFFECTS, etc. 735 "Therefore, we shall love you forever, O my God, my love, and all." "O Jesus, my love, when shall I kiss the wounds which you have suffered for me!" "O Mary, when shall it be that I may see myself at the feet of that Mother who has loved and helped me so much!" "Therefore, O our Advocate, turn those your merciful eyes towards us; and show us Jesus, the blessed fruit of your womb, after this exile."

VI. Affects which may be suggested to the sick while kissing the Crucifix.

"Most Sweet Jesus, do not look at what I have done to you, but at what you have done for me." "Remember that I am one of your sheep, for whom you died." "Gladly will I die for you, O my Jesus, who have suffered so much for me." "Receive me, O Jesus, consumed for you, who were entirely consumed for me." "Lord, your works for me are greater than those I shall suffer for you: you, innocent, I, a sinner." "Kiss, my brother (the priest says to the sick), those feet which labored so much to seek out and save you, this lost sheep." "Say, I beg you: Most beloved Redeemer, I embrace your feet, as Mary Magdalene embraced them; make me hear that I have been forgiven, as she heard."

"My God, spare me, for the love of Jesus Christ, and make me die a good death." "Eternal Father, you gave me your Son; I give you myself." "O Jesus, I have been very ungrateful to you, have mercy on me. I have deserved hell many times; let me be punished not in another life, but in this one." "If you have sought me when I was fleeing, do not abandon me when I seek you." "O sweetest Jesus, do not permit me to be separated from you." "What will separate me from the love of Christ?" Romans 8:35. "Lord Jesus Christ, through that bitterness which your most holy soul endured when it departed from your blessed body, have mercy on the soul of this sinner at the time of her departure from her body. Amen." "O Jesus, you died for my love; I wish to die for your love."

VII. Affects which may be suggested to priests and religious who are sick. "In peace in the self same I will sleep, and I will rest." "My God and all." "O, how blessed I shall be if I lose everything, so that I may gain you, my greatest good!" "Into thy hands I commend my spirit." "Do not cast me away from your presence." "O sweetest Jesus, do not permit me to be separated from you." "I shall die of the love of your love, which deigned to die for the love of my love." Thus spoke St. Francis. "A contrite and humble heart, O God, you will not despise." "In thee, O Lord, have I hoped, let me never be confounded." "I will love thee, O Lord, my strength." "O, that I might die, O Lord, that I may see you." "What have I in heaven, and what do I desire on earth besides you? God of my heart, and my portion, God, forever."

[*Latin ed. p. 748*]

736 APPENDIX II. ON ASSISTANCE TO THE DYING. "The psalm of David before he was anointed. The Lord is my light and my salvation, whom shall I fear? The Lord is the protector of my life." "Father, I have sinned; I am not worthy to be called your son." "Turn away thy face from my sins, and blot out all my iniquities." "I am thine, save thou me." "When will I come and appear before the face of God?" "Who shall separate us from the love of Christ?" "Grant me only your love and your grace, and I am rich enough." St. Ignatius of Loyola. "My beloved to me, and I to him who feedeth among the lilies,." "The mercies of the Lord I will sing

for ever. I will shew forth thy truth with my mouth to generation and generation." "Holy Mary, Mother of God, pray for us sinners, etc." "Life, sweetness, our hope, hail." "Refuge of sinners, pray for us." "Mary, Mother of grace, Mother of mercy, protect us from the enemy, and receive us at the hour of death." "O salvation of those who invoke you!" St. Bonaventure. § IV. Admonitions concerning the last sacraments, and the manner in which they can be received profitably. I. Concerning Confession. As was mentioned above in the practice (see our Moral Theology, book 6, nos. 260 and 484, note 2), when the danger of death is imminent, or perhaps the Eucharist is being administered, and a lengthy confession would be required, then the sick person is not obliged to confess all and each of their sins. Furthermore, the following should be noted: 1. Any priest, not only in articulo mortis, but also in danger (as the Council of Trent, session 14, chapter 7, on Penance, declared), can absolve those burdened with censures and reserved cases (book 6, no. 561). However, it must be noted that, concerning reserved censures, the confessor who lacks the authority is obliged to instruct the sick person to present themselves to a superior, otherwise they will fall back into the censures; no. 563, see the contrary. 2. A simple priest cannot absolve, if an approved confessor is present; however, if an approved confessor arrives while the confession has already begun. Also, if the approved confessor is involved with the sick person in a shameful sin, as decreed by the Most Holy Pope Benedict XIV (loc. cit., nos. 553, ad V and VI). 3. A dying person, deprived of their senses, can be properly absolved, at least under the condition (which is safer), provided that it is clear that the sick person desired absolution, giving a sign of penance, or if they have asked for confession, no. 479. And this is understood even if the dying person, in the act of sin, has lost their senses, no. 483, based on the authority of St. Augustine and reason; because, on the one hand, the condition removes irreverence from the sacrament, and on the other hand, it is always judged that everyone in such a case wishes to seek their salvation, and to show some sensible sign, even if, due to illness, the sign is not well understood. 4. If the sick person, even after being warned of the danger, refuses to confess, it will be best if the priest advises the doctor, according to the bull of Pope Pius V, not to visit him again. However, if the sick and the sick person remains obstinate, then the doctor may resume their care; see book 6, no. 664. II. Concerning Communion. The following admonitions are noted: I. In order for the Eucharist to be administered to the sick person, it is not necessary that they be completely without hope of life, but it is sufficient if they are in danger of death; book 6, no. 284. II. If vomiting is present, the Eucharist cannot be given; although it may be preceded by the experience with an

unconsecrated particle.

[*Latin ed. p. 749*]

MONITIONS REGARDING THE SACRAMENTS, etc. 737, book 6, chapter 292, paragraph 5. In doubtful cases, III. To children of sufficient reason, the Holy Communion may also be given properly; also to the mentally ill, provided it is known that they have lived piously, or if they have confessed recently, and there is no danger of irreverence; therefore, it is probably permissible to experiment with an unconsecrated particle in their case. IV. To the sick, even in preparation, as is stated in the decree of the Holy Congregation of Rites, published on February 19, 1622, it is not only permissible, but the pastors are obligated to administer the Holy Communion. V. The common opinion holds that to a sick person who is not fasting, the Holy Communion may be given more than once in the same infirmity, at least if there is an interval of six or eight days; indeed, many doctors require a shorter interval; see book 6, chapters 284 and 285. However, if the sick person has received Holy Communion in the morning through their own devotion, they cannot be given the Holy Communion on the same day, unless a danger of death arises from some sudden illness, such as a wound, poison, or similar event. Otherwise, if the sick person has already received Holy Communion in the morning while still in their infirmity, see the reasoning in the aforementioned chapter 285, paragraph 3. VI. However, if the sick person has only confessed, and the illness is worsening, then the priest should diligently prepare them to receive the Holy Communion as soon as possible, so that they may receive it with a clear mind and greater benefit; therefore, he should encourage them to desire to receive the Holy Communion, so that, fortified in this way, they may better resist the powers of the demon and receive greater grace, and so that they may unite more closely with Jesus Christ, our Redeemer, who desires to visit them (he should say), so that he may be able to pour out thanksgivings upon him, and lead him to the heavenly homeland; unless, of course, it is more beneficial for his physical health to postpone it. St. Cyril of Alexandria says that the Holy Eucharist also drives away diseases and heals the sick. And St. Gregory of Nazianzus recounts that his father immediately recovered after receiving Holy Communion. Therefore, the priest should speak to the sick person in this way: "My brother, although your health may not be hopeless, you are nevertheless in danger; therefore, it is best that you receive the Holy Communion as soon as possible, for Christ will restore you to your former health, if this is conducive to your eternal salvation. But if you must die, the devil will come to your aid, and he will be a companion on your journey to the blessed homeland. What do you say? Do you desire to receive the Holy Communion? Yes, indeed. Come then, prepare your soul to embrace your Redeemer, who died for you. Say with all your heart: Come, Jesus, my love, my everything, come; my soul

longs for you. What is there in heaven, and what have I desired on earth, but you? O God of my heart, and my portion, forever. " However, when the Holy Communion is brought, the priest should take care to remove from the sick person's room the parents, wife, sisters, children, etc., who may cause them distress; then he should add to them: "St. Philip Neri, when he saw the Holy Sacrament in his room, exclaimed: 'Oh, my love, oh, my love.' Also, say, brother, say: 'Oh, my love: here is the Son of God, who descended from heaven for your salvation, who became man, who willed to suffer death on the cross for you, and who now comes to visit you in your very room. Be of good cheer; your sins have already been forgiven. You have already repented of your faults, and you still repent. But now you love the Lord God with all your heart; is that so? Then say: 'I love you, my God, above all things, and because I love you, I repent of my sins: for the sake of your love, I gladly die; and now, if it pleases you, I desire to die, so that I may see you, and love you forever.'" 47.

[*Latin ed. p. 750*]

738 APPENDIX II. ON ASSISTANCE TO THE DYING. Let him say: "If you love Me, N., then forgive with all your love those who have offended you in any way; is this not so? Do you also ask forgiveness from those to whom you have caused injury and offense? Therefore, turn your face to Jesus, who desires to embrace you, and say with all your heart: Lord, I am not worthy; but even though you acknowledge yourself unworthy of such a great gift, the Lord desires to come to you. Therefore, call Him again ardently: Come, Lord, come, my love, my God and everything, come; my soul thirsts for you, and desires nothing else. " After the sick person has received Communion, the priest should assist him in giving thanks: "Therefore, brother, now give thanks to the Lord, who has deigned to come to you and embrace you. This Sacrament is a pledge of future glory. The Lord is with you; what more should you fear? Rejoice, brother, for God wishes to give you paradise; and therefore, He is worthy to give Himself entirely to you: therefore, say: My Lord, my love, I embrace you, I give you thanks, I love you, and I hope to love you forever: I repent of having offended you, and I firmly resolve to dedicate whatever remains of my life to your love. " Jesus, my life I gladly offer as a sacrifice, if it pleases you to take it from me. May your will be done always. I pray that you may grant me perseverance and your love alone, so that by loving you, I may cleanse my soul, so that I may come to love you forever in heaven. You will not abandon me, and I will not abandon you; therefore, God of my soul, may we love each other forever. " III. Concerning Extreme Unction. As Extreme Unction is the last Sacrament, so too, according to St. Thomas, it is the crown of the spiritual life; it prepares the person, strengthened by this Sacrament, to enter the heavenly homeland. Therefore, this Sacrament should be administered while the sick person still has his senses, so that it

may be more beneficial to him; for, although it can only be administered if there is a grave danger of death (at least probable), (as in our Moral Theology, book 6, no. 71, question 4), it should not be postponed to the very end of life (see the cited passage, article 1). Therefore, the Roman Catechism states, § 2, no. 18: "It is a grave sin for pastors to administer Extreme Unction when there is no hope of life, and the sick person is already deprived of his senses." The priest should strive to persuade the sick person that, if Extreme Unction is beneficial to the soul, it may also contribute to the healing of the body, as stated in Trent, session 14, chapter 2, on Extreme Unction: "Sometimes, when it is advantageous for the salvation of the soul, it follows that the health of the body is restored." However, this healing is not conferred if it is naturally impossible to be restored to health. John Eroldus recounts that a certain person, after being dead, revealed that if he had received Extreme Unction earlier, he would have immediately recovered from his illness; but because he had delayed, he died, and was condemned to a hundred years in purgatory. Secondly, Extreme Unction remits the remains of sins, and consequently, even hidden mortal sins, as St. Thomas teaches: see book 6, no. 73, article "Common"; therefore, the sick person should be instructed that, as the five senses of the body are anointed, he should also grieve over the sins he has committed, and respond with those present: "Amen." Thirdly, it provides particular helps, which will break the force and attack of hell in that final struggle. Therefore, it is very likely that a person who refuses to receive this Sacrament will be greatly burdened with sin, as we have said above.

[*Latin ed. p. 751*]

MONITIONS CONCERNING THE SACRAMENTS, etc. 739 Certain necessary points regarding the administration of this sacrament may be noted here. I. It is only probable, and not certain, that administering this sacrament with a single drop of oil, without spreading it over the parts of the body, is sufficient; however, this is not the case in practice, because this would not be a true unction; see *Moral Theology*, n. 709, question 4. II. The unction of the five senses is, according to the common opinion, essential to the sacrament; therefore, in times of pestilence, or when there is an imminent danger of death, only one unction, and only on one sense, may be administered (more fully explained in the chapter) but always under the condition that the patient is able to understand, and with the following formula: "Through this holy unction, and through His most gracious mercy, may God forgive you whatever sins you have committed through your senses, namely, sight, hearing, taste, smell, and touch." However, if the patient survives, the unctions must also be repeated, under the same condition, on all five senses, with the usual prayers. III. It is not necessary to apply the unction twice, once on each side of the body; indeed, it is sufficient to anoint only one eye, one hand, etc., provided that there is a

danger of infection, or some other necessity, such as when the sick person is unable to turn to the other side. The unction of the loins in women, and also in men, is omitted when the sick person (as the Ritual directs) cannot be conveniently moved. The common opinion holds that the unction of the feet is not essential to the sacrament; but with regard to this, the custom of the churches must be observed, n. 710, see Certain. Nor is it necessary for the sacrament to observe the order of the parts to be anointed; however, one incurs grave guilt by not following the accepted order; see loc. cit. see Neither. IV. Extreme unction is properly conferred upon children who are of the age of reason, even if they are not yet eligible for Holy Communion; however, if there is doubt about the use of reason, it may be administered conditionally. This, however, does not apply to those who are completely lacking in reason; n. 719 and 720. V. It may be given to the insane, the frenetic, and the delirious, who, while they have used their reason, have given a sign of a good disposition, and have asked for extreme unction, or would have likely asked for it, or have given a sign of contrition, provided that there is no danger of irreverence; and all the more so if they have a lucid interval. If there is doubt as to whether someone has ever used their reason, it may be given conditionally. The same applies to the intoxicated, if they are in danger of death, unless it is clear that they were in mortal sin when they lost their senses; for the impenitent, and those who are dying in manifest sin, as well as the excommunicated, it must be entirely denied, as the Roman Ritual states; see book 6, n. 732. It may also be given to women who are in danger of death due to the pains of childbirth. VI. The prescribed prayers, apart from the formula, may be omitted in cases of necessity; those that are said later, if time permits, may be said afterwards, n. 727. And in such a case, the sacrament may be administered, even without lights and a minister, n. 728, and also probably without the cope and stole, n. 726. VII. Extreme unction cannot be repeated in the same illness, unless the sick person has previously shown a probable recovery, and has fallen into another similar danger; as taught by the Council of Trent, session 14, canon 3; see book 6, n. 715. VIII. The priest should be careful when moving the sick person, so that he may anoint the parts that are closest; however, if he turns the person carefully, and he dies from that turn, he does not incur an irregularity; because in this case, an irregularity cannot occur unless it is due to a fault, from which he who acts for a charitable reason is exempt. Finally, it would be right for a priest to be called to his own home to administer the unction. book 6, no. 730.

[*Latin ed. p. 752*]

APPENDIX II. ON THE CARE OF THE DYING. § V. Instructions Regarding Agony and Death. When the sick person reaches the point of agony, the priest should, as far as possible, assist him using the customary weapons of the Church.

1. He should frequently sprinkle the sick person with blessed water, especially if he is agitated by diabolical temptations, saying: "May God arise, and may his enemies be scattered."

2. He should protect him with the sign of the cross and bless him, saying: "May God the Father, who created you, bless you; may the Son, who redeemed you, bless you; may the Holy Spirit, who sanctified you, bless you."

3. He should provide an image of the Savior, as well as of Mary, which can be frequently kissed.

4. He should ensure that the sick person receives all the indulgences possible, and especially that he receives the blessing "in articulo mortis" of Benedict XIV, along with the plenary indulgence noted below.

5. He should repeatedly suggest thoughts of sorrow, conformity, hope in the Passion of the Lord, and the intercession of the Blessed Virgin Mary, as well as a desire to see God. However, the priest should interpose some intervals, so that the sick person may have time for reflection and rest.

6. He should strive to have the Holy Names of Jesus and Mary invoked as often as possible, at least in the heart, if he cannot speak, and he should frequently say that prayer: "Mary, Mother of Grace, etc."

7. During the agony, he should arrange for the Litany of the Blessed Virgin to be recited for the sick person. It will also be beneficial to have the bell rung to announce the imminent death of the dying person, so that others may pray for him; this can also help the healthy. And it should be generally noted that when the sick person is deprived of the senses, prayers are more beneficial to him than words.

8. When the time of death approaches, the priest should recite, with a sorrowful voice and on bended knees, the customary prayers of the Church: "Go forth, etc.," as found at the end of the Breviary or Ritual.

9. While touching the sick person's hands, feet, etc., to see if he is cold, he should be careful not to do so too often, lest he disturb him; and he should take care not to turn him over in that state of agony, for this could hasten his death.

10. When the sick person is close to death, he should give him a blessed candle to hold, so that he may die professing his faith.

11. While the sick person still has his senses, it will be beneficial to administer absolution to him several times after a brief reconciliation, so that he may be more secure in the state of grace, if perhaps his previous confessions were invalid, or at least to receive an increase of grace, and so that the penalties of purgatory may be lessened for him. And if, perchance, the sick person commits a mortal sin at that time, he should not be afraid, but should be encouraged to invoke the names of Jesus and Mary; if he is tempted again, he should comfort him kindly, and strive to elicit an act of contrition,

and then absolve him immediately. However, if the sick person is already without his senses, and shows no sign of sorrow or desire for absolution, it is not advisable to administer absolution to him too frequently within the same day; for then, although it may be given conditionally, yet, in order for the sacrament to be validly administered under a condition, a pressing and serious reason is required; therefore, some notable interval of time must intervene. However, the priest should be guided by the knowledge he has of the sick person: for if he has been accustomed to bad thoughts, if he is dying from some wound, or if he is caught in some passion of hatred or impure love, or if the illness is very severe, and he does not bear it willingly, then absolution can be given more frequently; but otherwise, it is sufficient if an interval of three or four hours passes: more frequently, however, if he is already dying. It will not be amiss to warn the sick person, while he is of sound mind, to give some definite sign when he seeks absolution, or when the priest wishes to administer it to him, for example, by closing or opening his eyes, raising his hand, or bowing his head, and the like.

[*Latin ed. p. 753*]

AFFECTS WHICH MAY BE SUGGESTED, etc. 741 Finally, when it appears that he has already departed this life, let the priest take care not to immediately give signs of his death, nor immediately close his eyes or mouth, or cover his face with cloths, because if he were not yet dead, it might happen that death would be hastened. But when he certainly knows that the soul has already departed for eternity, let him urge those present to pray for him, and let him himself, kneeling, say the prayer: "Come to our aid, etc.," as in the Ritual or Breviary. § VI. Affects which may be suggested at the time of agony and expiration. "In You, O my God, I place infallible truth; in You, I hope for immense mercy; I love You, infinite goodness. In You, O Lord, I have hoped, and I shall not be disappointed forever. What do I have in heaven, and what do I desire from You on earth? O God of my heart, and my portion forever. By the love of Your love, I shall die, who have loved that You deigned to die for the love of Your love. In You I shall sleep and rest in peace. O my God, do not permit me to be separated from You. I desire nothing but You. Infinite goodness, I love You, I love You, I love You." (It should be noted here that the acts which should be frequently suggested to the dying are those of love and sorrow.) "Jesus, my Jesus, who will soon judge me, have mercy on me before You judge. I love You, and because I love You, I repent of having offended You. Jesus, my sweetest Jesus, do not permit me to be separated from You. The Blood of Jesus, wash me. The Passion of Christ, save me. Into Your hands, O Lord, I commend my spirit. I shall die, O Lord, that I may see You. Mary, Mother of God, pray to Jesus for me. Turn Your merciful eyes to us, and after this exile, show us Jesus, the blessed fruit of Your womb. O Mary, now is the time to help Your servant. My Mother, do not abandon me. O paradise, O beautiful

homeland, O homeland of love, when shall I see You! My God, when will I love You face to face! When, my Jesus, will I no longer fear losing You! My God and everything! I am content to lose everything, in order to gain You, my God. My God, have mercy on me for the love of Jesus. Send me, O Lord, into the fire of Purgatory, for as long as You will; but I do not wish to go to hell, where I cannot love You. Therefore, we beseech You, help Your servants, whom You have redeemed with Your precious blood. Eternal God, I hope and desire to love You eternally. My love has been crucified. Jesus, my love, has died for me. O God, come to my assistance; O Lord, make haste to help me, etc. Eternal Father, for the love of Jesus Christ, grant me Your grace. I love You, I repent. How can I repay You, O my God, for so many and such great benefits that You have done for me? I hope to give You thanks eternally in heaven.

[*Latin ed. p. 754*]

742 APPENDIX II. ON ASSISTANCE TO THE DYING. "Mary, Mother of Grace, Mother of Mercy, etc." "Have mercy on me, O God, according to Thy great mercy." "I will sing of the mercies of the Lord for ever." As the sick person is now near to expiring. "Into Thy hands I commend My spirit." "Jesus, My Jesus, I commend My soul to Thee, which Thou hast redeemed with Thy blood." (It should be noted that when the sick person is already very near to exhaling his soul, the acts of devotion should be performed without pause and with a louder voice.) "Lord Jesus Christ, receive My spirit." "My God, help Me; without Me, I cannot come to love Thee eternally." "Jesus, My love, I love Thee, I repent." "O may I never offend Thee!" "O Mary, My hope, help Me, pray for Me to Jesus." "Jesus, for the sake of Thy Passion, save Me: I love Thee." "Mary, My Mother, help Me in this hour." "St. Joseph, help Me; Archangel Michael, defend Me. Angel of the Lord, guard Me." "St. N. (here is mentioned the principal protector of the sick), commend Me to Jesus Christ." "Saints and holy ones of God, intercede for Me." "Jesus, Jesus, Jesus!" "Jesus and Mary, I offer You My heart and soul." § VII. Signs of Impending Death. It is necessary that the priest, who performs this work of charity, know the signs of impending death, so that he may better assist the sick person who is about to expire. The three principal and universal signs are: 1. a weakening, intermittent, and trembling pulse; 2. labored breathing; 3. eyes sunken and clouded, or wider than usual, or too bright, or which perceive objects differently than they appear to others; or when the upper eyelid relaxes, and the lower eyelid passes it. There are also signs very close to death, such as a sharpened nose, and at the extreme, a whitening of the nose, and if the nostrils blow out as if with a bellows; trembling hands, livid nails, a yellowish, livid, and changed complexion; a foul-smelling and cold breath; an immobile body; sweat on the forehead and cold; excessive heat in the area of the heart; the appearance of down or lanugo; coldness in all extremities. How-

ever, signs even closer to expiration are: intermittent or weak breathing, a weakening of the pulse; contraction of the teeth, and a grinding sound; a distillation in the throat; a gentle sigh, or groans; tears flowing spontaneously; a twisting of the mouth, eyes, and the whole body. Note 1. That those suffering from dropsy, fever, or wounds, asthma, pleurisy, bleeding, vomiting, angina, and rheumatism, sometimes expire with only a few of the aforementioned signs, and with a strong pulse, and while speaking. Note 2. Those who are near death are those who suffer from pleurisy, when difficulty in breathing, increased shortness of breath, and livid lips appear. Those who have been wounded in the head sometimes die with a sudden collapse. Those suffering from dropsy, when the pulse weakens and the shortness of breath increases, and foam appears in the mouth. Those who suffer from intermittent fever often die at the beginning of the attack, when violent convulsions occur. Note 3. That in some sick people the breath is so weak, and the agitation of the heart so great, that they seem to be dead, and yet they are not. All of these are more certain signs of death.

[*Latin ed. p. 755*]

PRAYERS, CHRISTIAN ACTS, etc. 743. Coldness, even in the region of the heart, heaviness of the body, the inability of someone to feel a stimulus applied to the nostrils; the mirror not being stained by breath, and similar signs. Finally, it should be noted that sometimes the aforementioned signs, when present, are misleading, and even without them, the sick person may suddenly die; therefore, as long as the sick person remains in agony, the priest should never despair. § VIII. and last. Prayers, Christian acts, and blessings. The priest, entering the sick person's home, says: "Peace to this house. And to all who dwell in it." He sprinkles the room with holy water, saying: "Thou shalt sprinkle me with hyssop, and I shall be cleansed: thou shalt wash me, and I shall be made whiter than snow." Then he may say the prayers that are found in the Rituale for Extreme Unction. Afterwards, he takes the image of the Redeemer, saying: "Behold the cross of the Lord, flee, you hostile powers." And he offers it to the sick person to kiss, saying: "Kiss the feet of Jesus Christ, who died on this cross for your salvation." Then he says: "Therefore, place your hope in God. We hope that Mary, by the grace of God, will intercede for your salvation; however, the illness is grave; conform your will to the will of God, so that He may do with you what He wishes. Therefore, recite with me the Christian acts, so that with these, you may prepare yourself for death, if God has so determined for the good of your soul; say then with me:" Acts of Faith. "My God, infallible truth, because you have revealed to me what I ought to believe, I believe what the Holy Church proposes to me. I believe that you are my God, Creator of all things, who will reward the just in paradise for all eternity, and punish the sinners in hell. I believe in the mystery of the Most Holy Trinity, that is, the Father, the Son, and the Holy Spirit, three persons,

but one God. I believe in the second person, that is, the Son of God, who became man in the womb of the ever-virgin Mary, and who died for us sinners. He rose again, and now sits at the right hand of the Father, and from there He will come to judge the living and the dead. I believe in the seven Holy Sacraments, and especially Baptism, Penance, the Eucharist, and Extreme Unction. I believe that all must rise again with their bodies, and finally, I believe all that the Holy Roman Catholic Church believes, in which alone I believe there is true faith." Acts of Hope. "My God, trusting in your promises, because you are faithful, powerful, and merciful, I hope, through the merits of Jesus Christ, for the forgiveness of my sins, for final perseverance, and for the glory of paradise." Acts of Love and Sorrow. "My God, because you are infinite goodness, worthy of infinite love, I love you with all my heart above all things. And I am deeply sorry for all my sins, because I have offended your infinite goodness, and with all my soul, I detest them. I propose to myself, with your grace, to die rather than sin, which I pray you to grant me now and always. And I propose to receive the Holy Sacraments in life, and in death." (Pope Benedict XIII granted an indulgence of seven years to all who elicit these acts once a day; and if they are performed perfectly, after confession and Communion, according to the will of the Pope, a plenary indulgence is granted, even for the souls of the departed, and if anyone performs them at the end of life, an indulgence in articulo mortis is granted.)

[*Latin ed. p. 756*]

744 APPENDIX II. ON ASSISTANCE TO THE DYING. The Blessing at the Point of Death. In the year 1747, the reigning Pontiff granted bishops, and their delegates, the faculty of granting a plenary indulgence to the sick who request it, after they have received the sacraments of Penance, Eucharist, and Extreme Unction, or if they have earnestly requested them, or if they have given some sign of suffering, and afterwards have lost their senses. However, this is not to be given to excommunicated persons or the impenitent; nor even to those who are dying in evident sin. The manner in which this blessing is given is as follows. The priest, entering the sick person's home, says: "Peace to this house, and to all who dwell in it." And he sprinkles the blessed water, saying: "Thou shalt sprinkle me with hyssop, and I shall be cleansed: thou shalt wash me, and I shall be made whiter than snow." Afterwards, he says: "Have mercy on me, O God, according to thy great mercy. And according to the multitude of thy tender mercies blot out my iniquity. Glory to the Father, etc." And saying nothing else, he repeats the antiphon: "Thou shalt sprinkle me, etc." If the sick person requests confession, the priest should hear it with kindness; but if, on the contrary, he seeks to elicit an act of contrition from the sick person, he should strive to comfort him and encourage him to hope for the glory of paradise. He should urge him to offer himself entirely to God, and to accept whatever

God wills for him, as well as death itself, for the satisfaction of his sins. Then he says: "Help us, in the name of the Lord. r. Who made heaven and earth." Antiphon: "Remember not, O Lord, the sins of thy servant (or thy handmaid), nor take vengeance for her sins. Kyrie, eleison. Christe, eleison. Kyrie, eleison. Our Father, etc." r. "And lead us not into temptation. r. But deliver us from evil." r. "Save thy servant (or thy handmaid), O Lord; r. My God, in thee do I hope." r. "O hear me, r. And all my cry." r. "The Lord be with you. r. And with thy spirit." LET US PRAY. "Most merciful God, Father of mercities, and God of all consolation, who will not that any who believe and hope in Him should perish, according to the multitude of thy mercies, look favorably upon thy servant N., whom true faith and Christian hope commend to thee. Visit him in thy saving grace, and through the passion and death of thy Only Begotten, grant him mercifully the remission and forgiveness of all his sins, that his soul, at the hour of his death, may find thee a merciful judge, and, cleansed from all stain in the blood of the same Son, may pass over into everlasting life. Through the same, etc." Then, after the cleric has said, "I confess to God," the priest says: "May he have mercy, etc. May he grant the indulgence, etc." And then: "Our Lord Jesus Christ, the Son of the living God, who gave to His apostle Peter the power to bind and to loose, may He, through His most pious mercy, receive thy confession; and may He restore to thee the garment which thou didst receive at thy Baptism; and I, by the authority granted to me by the Apostolic See, grant to thee a plenary indulgence, and the remission of all sins. In the name of the Father, etc."

[*Latin ed. p. 757*]

PRAYERS, CHRISTIAN ACTS, etc. 745 "May the all-powerful God, through the sacred mysteries of human redemption, remit to you all the penalties of this life and the life to come, open the gates of paradise, and lead you to eternal joys. Amen. May the all-powerful God bless you, † the Father, and the Son, and the Holy Spirit. Amen." But if someone were so close to death that there was no time for the aforementioned prayers, the priest should immediately bestow upon him this blessing: "May our Lord Jesus Christ, etc. The Blessing of the Scapular of the Most Holy Virgin of Mount Carmel. The priest, turned towards the vestments, says: "Shew us, O Lord, thy mercy." And give us thy salvation. "O Lord, God of virtues, turn us; and let thy face be showed, and we shall be saved. "O Lord, hear my prayer; and to thee shall my cry come. "The Lord be with you. And with thy spirit." LET US PRAY. "Head of all the faithful, and Savior of the human race, sanctify with thy right hand this habit, which thy servant is about to wear, because of his love and devotion to thee and to thy most holy Virgin Mother, Mary of Mount Carmel, † so that what is mystically given through it may always be kept safe, both in body and soul, and that he may be most happily led to eternal reward with all the saints. Who

lives and reigns world without end. Amen." Then he sprinkles the blessed water over the habit, and afterwards places it upon the person receiving it, saying: "Receive, devout person, this blessed habit, praying that the Most Holy Virgin may, through her merits, keep it without stain, and that she may defend you from all adversity, and lead you to eternal life. Amen." Then he says: "I, by the power that has been given and granted to me, accept and receive you to participate in all the prayers, disciplines, devotions, suffrages, alms, fasts, vigils, Masses, canonical hours, and other spiritual benefits which are commonly performed day and night (with the cooperation of the mercy of Jesus Christ) by religious. In the name of the Father, and of the Son, and of the Holy Spirit. Amen." "May † the Creator of heaven and earth, the all-powerful God, bless you, who has deigned to choose you for the society and confraternity of the blessed Virgin Mary of Mount Carmel, and we pray that at the hour of your death, she may crush the head of the serpent who is your adversary, and that you may finally, as a victor, inherit the palm and the eternal crown. Through Christ our Lord. Amen."

[*Latin ed. p. 758*]

746 APPENDIX II. ON ASSISTANCE TO THE DYING. The recipient is sprinkled with blessed water. The blessing of the Scapular of Saint Mary of the Seven Sorrows. Antiphon: "Our help is in the name of the Lord." Response: "Who made heaven and earth." LET US PRAY. "O Lord Jesus Christ, who have deigned to clothe us in the garment of our mortality, we beseech you, by the immensity of your generosity, that you would deign to bless this kind of garment, which the holy fathers instituted to be worn in memory of the seven sorrows of the Blessed Virgin Mary, as a sign of innocence and humility, that whoever is clothed in it may, both in body and soul, be clothed in you, our Savior. Who live and reign world without end. Amen." Afterwards, the priest, having sprinkled the scapular with blessed water, places it upon the recipient, saying: "Receive, most beloved brother, the habit of the Blessed Virgin Mary, a singular sign of her servants, in memory of the seven sorrows which she bore in life and in death for her only-begotten Son, that, clothed in it, you may live forever under her patronage." "May the blessing of Almighty God, the Father, and the Son, and the Holy Spirit descend upon you, and remain with you always. May the Passion of our Lord Jesus Christ, and the compassion of the Blessed Virgin Mary be in our heart and body. Amen." The blessing of the Scapular of the Immaculate Conception of the Mother of God. Antiphon: "Our help is in the name of the Lord." Response: "Who made heaven and earth." Antiphon: "The Lord be with you." Response: "And with your spirit." LET US PRAY. "O Lord Jesus Christ, who have deigned to clothe us in the garment of our mortality, we humbly implore the clemency of your generosity, that you would deign to bless this kind of garment, which was

instituted in honor and in memory of the Immaculate Conception of the Blessed Virgin Mary (and also that, clothed in it, one may pray), for the reformation of wicked men: that this your servant, who has been clothed in it, may, through the intercession of the same Blessed Virgin Mary, also deserve to be clothed in you. Who live and reign, etc." Afterwards, the priest, having sprinkled the scapular with blessed water, places it upon the recipient, saying: "Receive, brother, the scapular of the Blessed Virgin Mary, Immaculate, that, with her intercession, having cast off the old man, cleansed from all defilement, you may bear it without spot, and arrive at everlasting life. Amen." "And I, by the authority given to me, receive you into participation of the spiritual benefits which are wrought by the grace of God in our congregation, and which have been granted by the privilege of the Holy Apostolic See. In the name of the Father +, and the Son, and the Holy Spirit. Amen." If the sick person has never received any scapular, or any of those of which we have spoken above, the priest who has the authority should take care that the sick person receives it then, so that he may gain indulgences.

[*Latin ed. p. 759*]

OF THE SACRAMENTS IN GENERAL. 747 APPENDIX III. EXAMINATION OF THOSE TO BE ORDAINED, briefly compiled by the same author from his own Moral Theology, containing matters of greater necessity. INDEX OF THE ENTIRE APPENDIX. Chapter I. Of the sacraments in general. Chapter II. Of the sacrament of Holy Orders in general. Chapter III. Of the Orders in their specific forms. Article I. Of the first tonsure. Article II. Of the minor orders. Section I. Of the order of Acolyte. Section II. Of the order of Lector. Section III. Of the order of Exorcist. Section IV. Of the order of Acolyte. Article III. Of the major orders. Section I. Of the subdiaconate. § I. Of the vow of chastity. § II. Of the canonical hours. § III. Of censures in general. § IV. Of censures in their specific forms. I. Of excommunication. II. Of suspension. III. Of deposition. IV. Of interdict. V. Of irregularity. Section II. Of the diaconate. Section III. Of the priesthood. § I. Of the order of priesthood. § II. Of the Sacrifice of the Mass. § III. Of the power of the priest. § IV. Of the ministry of teaching and preaching. CHAPTER I. Of the Sacraments in general. 1. What a sacrament is. — 2. What is required to constitute a sacrament? Whether circumcision, etc. — 3. What are sacramentals. — 4. The sacraments are distinguished. — 5. Q. I. What is required for the essence? Of the matter. — 6. Of the form, and of the connection of matter with form. — 7. Of substantial or accidental change. — 8. Of a sacrament under a condition. If with a doubtful or mixed form or matter. Interruption of the form. — 9. Of the intention of the minister and the recipient. — 10. Q. II. Of the minister. — 11. Whether he must be in the state of grace. — 12. If he is a layperson, or if he administers not solemnly; whether contrition suffices. — 13. If he is absolved from mortal sin: if he administers the Eu-

charist: if he celebrates Mass. — 14. If a subdeacon or deacon administers solemnly. — 15. If he administers to an unworthy person. — 16. To simulate the administration of a sacrament. — 17. To simulate the reception of a sacrament. — 18. Whether the minister must intend that which the Church does. — 19. Q. III. What is required to validly and licitly receive the sacraments. — 20. Whether it is permissible to ask for something from an excommunicated person or a sinner. — 21. Whether it is permissible to give money for the administration of a sacrament. 22 and 23. Effects, and I. Of grace. — 24. II. Of the character. 1. A sacrament, generally speaking, signifies a mystery, or a thing.

[*Latin ed. p. 760*]

748 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. hidden; but the sacrament is defined in the Christian Church as "a sensible sign of an invisible grace, instituted by Christ to sanctify the people of God." It is called a sensible sign because it is an external sign, subject to the senses. It is of an invisible grace, because the sacrament signifies the grace it confers invisibly, namely, through the action performed, or by the recipient's disposition. It is instituted by Christ, because, according to the more probable opinion, Christ, even as a man, instituted the sacraments by a power said to be excellent (1). 2. Therefore, three things are required for a sacrament: 1. an external sign, 2. a promise of grace, 3. the institution of Christ, since all the sacraments derive their power from Christ's Passion. It is debated whether circumcision was once a true sacrament, conferring grace through the action performed? Scotus affirms, but generally the doctors deny it; for circumcision operated only an external holiness, not an internal one; however, it is commonly held that it was a true sacrament (2). 3. Sacramentalia, on the other hand, are certain sacred actions instituted by the Church, such as holy water, blessings of things, consecrations, and the like. These do not, by themselves, have the power to remit sins, but only to obtain divine helps to elicit good acts by which sins are subsequently remitted (3). 4. The sacraments are distinguished in many ways. First, some are necessary by the necessity of the means, such as Baptism for all; Penance for those who have fallen into mortal sin, and Holy Orders for those who minister the sacraments of the Eucharist and Penance: also the Eucharist (according to the more probable opinion), at least implicitly in the vow (4). Others are necessary by the necessity of the precept, such as Confirmation, according to the probable opinion, although Nav. Suar. Sot. Laym. Ronc. Wig. from D. Thomas (5), and others also hold it to be probable (6); and Extreme Unction, according to the more probable opinion, which should be encouraged (7). Secondly, some sacraments are repeatable, such as the Eucharist, Penance, Extreme Unction, and Matrimony; others are unrepeatable, such as Baptism, Confirmation, and Holy Orders, because of the character which they indelibly imprint.

Thirdly, some sacraments are for the dead, such as Baptism and Penance, because they confer the first grace, and prepare the soul of the deceased, that is, the soul lacking grace; others are for the living, which sometimes, by accident, also confer the first grace, namely, in the case where someone, with attrition, in good faith believing himself to be contrite, receives them, as Lug. Suar. Conc. Cajet. Croix, Salm. Cast. and others from D. Thomas, against others, commonly teach (8). Fourthly, some are *in forma*, that is, with the effect of grace; others are *in informae*, that is, without the communication of grace, which is the form of the sacrament. Whether a valid and *in informae* sacrament of Penance is given, some deny; but generally and more truly, others affirm. The case would be if someone were to receive absolution from a mortal sin with only attrition conceived from the supernatural turpitude of that sin, and with an excusable ignorance of another mortal sin. (Whoever wishes to see this question with all its reasons explained, should see tract. 16, ad n. 18.) (1) See moral work, book 6, nos. 1, 2, and 3. (2) Book 6, no. 4. (3) No. 90, ad 64. (4) No. 193. (5) In 3. p. q. 73, art. 1, ad 3, and a. 8, ad 4. (6) Book 6, no. 181. (7) No. 735, v. Queritur. (8) Nos. 6 and 85.

[*Latin ed. p. 761*]

OF THE SACRAMENTS IN GENERAL. 749 5. — It is inquired: What is required for the essence of a sacrament? Three things are required: matter, form, and intention. Matter is a corporeal and sensible thing, which is applied to the recipient, e.g., water, chrism, holy oil, etc. And this is the remote matter; the proximate matter is the very application of the matter, such as ablution, unction, etc. 6. — The form consists of the words pronounced by the minister. However, for the sacrament to be valid, a connection, or simultaneity, is required between the matter and the form, that is, the matter must be applied before the form is completed, or after the form has begun. However, the opinion that it is sufficient to apply the matter immediately before or after the pronunciation of the form is only probable, and not morally certain, as is required when dealing with the validity of a sacrament, according to a proposition condemned by Innocent XI; therefore, it is not practically probable. However, the sacraments of Penance and Matrimony are excepted, which are valid even if some delay occurs between the matter and the form (1). 7. — If the substantial matter is changed, namely, if wine is applied instead of water, or if the form is changed, namely, if the words do not have the same meaning, such as saying "I sprinkle you," instead of "I baptize you," the sacrament is invalid. Otherwise, if the change is accidental, namely, if the water is hot or boiled, or if one says: "I baptize you in the name of the Father, and the Son, and the Holy Spirit," as is stated in cap. Retulerunt, dist. 4. Or "In the name of the Almighty God, etc." In this case, however, the one who changes it would not be excused from a grave sin (2). 8. — In a case of necessity, or of

great utility, sacraments can be validly conferred under a condition (at least with the intention retained), not only those that imprint a character, as is certain from cap. 2 de Bapt., but also others, if the matter cannot be obtained except in a doubtful manner; thus, Suarez, Castiglione, Habert, Bonaventure, Roncaglia, Salm, and others commonly hold, contrary to Juvenal and Antoine (3). However, can the minister use a doubtful matter or form if he is compelled by fear of death? Probably he can, unless he is compelled in contempt of religion; thus, Sanchez and Coninch (4). If a foreign substance is mixed with the proper matter in a greater or equal proportion, the matter is unsuitable; otherwise, if it is in a smaller proportion; thus, St. Thomas (5). A slight interruption of the form does not affect the validity of the sacrament. Otherwise, if it is such that the words do not constitute a single meaning (6). However, it is not permitted to repeat the form, unless there is a probable doubt that the form was improperly pronounced (7). Some say that certain matters and forms of the sacraments were generally determined and left to the Church by Christ, so that the Church could determine them in particular. But it is more likely that all were determined by Christ in substance. Therefore, if any difference is found between the new and ancient customs of the Church regarding matters and forms, that change is considered only accidental (8). (See this question referred to the truth, tract. 17, n. 15.) 9. — Finally, for the essence of a sacrament, the intention of the minister is required, and indeed, an actual intention, or at least a virtual intention. An actual intention is one that is actually present; a virtual intention is one that remains in virtue of the action which the minister performs based on a previously held actual intention; this is different from a habitual intention, which is sometimes present and not retracted (9). This habitual intention is not sufficient in the minister, but it is sufficient in those who receive the sacraments: and even in cases of necessity, even if they themselves are sleeping, (1) Lib. 6, n. g., and ibid., v. In Penit. — (2) N. 11. — (3) N. 28 and 29. — (4) 3a, q. 74, a. 3, ad 5. — (5) L. 6, n. 11, ad 3. — (6) N. 224, v. Advertendum. — (7) N. 12. — (8) N. 15 and following. — (9) N. 15 and following.

[*Latin ed. p. 762*]

750 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION.

Either drunk, or having fallen into incontinence after having already formed the intention of receiving [the sacrament], as Lugo, Castrop, Salm, and many others teach with St. Thomas (1), and as is evident from *Capitula Maiora*, § *Verum*, on Baptism, and also from the Instruction on Baptism issued by Benedict XIV, beginning with "Postremo mense" (in Bullarium, vol. 2, no. 46). Indeed, with regard to Extreme Unction and even Confirmation, it suffices for the recipient to have *interpretative* intention,

that is, an intention which the recipient does not presently have, nor has ever had, but would have if he were aware of the matter (2).

10. — Question: Who is the minister of the sacraments? With regard to Holy Orders, only the bishop is the minister (3), and with regard to Confirmation, he himself is the ordinary minister; for ordinary priests can also be extraordinary ministers (4). For the other sacraments, only a priest is the minister, except for Marriage (5), and also for Baptism in cases of necessity; in such cases, even laymen and even heretics can baptize (6).

11. — However, for the valid administration of the sacraments, it is not necessary for the minister to be in the state of grace; for even sinners validly administer them; not, however, heretics, nor excommunicated persons, with regard to the sacrament of Penance. See the statements in treatise 16, no. 92. However, for the *licit* administration of the sacraments, the state of grace is required; but in extreme necessity, if the minister could not confess immediately, he is probably excused from guilt if he administers [the sacrament]; so say Soto, Suar, Tolet, Cajetan, Armil, Valent, Anacl (7). Never, however, is a parish priest or an economist excused: these must always be prepared to administer. The celebrant, however, when in mortal sin, commits four mortal sins: 1. because he consecrates unworthily, 2. because he receives unworthily, 3. because he administers unworthily, and 4. because he administers to one who is unworthy, and who is himself the same (8).

12. — Question: Does one sin gravely who, being in mortal sin, administers a sacrament in necessity, if he is not ordained for it, as a layman contracting marriage, or baptizing; or if he is ordained, but administers it not solemnly? Some probably deny this, as the Council of Trent, Natali, Alexander, and others, following St. Thomas (9). But it is more probable that they affirm it, as Continuat, Tournel, La Croix, Antoine, Lug, Pont, Vasq, Nav, etc. (10) because all things that are holy must always be treated as holy (10). However, the minister who is about to solemnly administer the sacraments, if he is in mortal sin, suffices that he elicit a certain act of contrition (11); the celebrant, however, must make a confession beforehand; except in the case where, on the one hand, he is obliged to celebrate out of necessity, and, on the other hand, a confessor is not available; but then, after the celebration, he must confess as soon as possible, as prescribed by the Council of Trent, session 13, chapter 7 (12). See the statements on the Eucharist in treatise 15, no. 22.

13. — The confessor, merely hearing the confession of one in mortal sin, it is more probable, with Lugo, Spor, Salm, Elb, Croix, and others, that he does not sin gravely, because he does not consecrate the sacrament. However, if he absolves several penitents, even successively, while in the state of mortal sin, he commits several mortal sins, because he administers several distinct sacraments (13). A priest, or a deacon, administering the

Eucharist while in mortal sin, sins mortally, because he is closely involved in the sanctification of those who receive communion; this is the opinion held by many, against others (14). However, the celebrant, when in mortal sin, if he administers the Eucharist to several, it is more probable that he commits one mortal sin, because the administration (1) In 4 dist. 6, q. r., a. 2, and q. 3, ad 2.

(2) Lib. 6, no. 8r and 82.

(3) No. 76r.

(4) No. 170.

(5) No. 897.

(6) No. 115.

(7) See lib. 6, no. 33, and Cabrin, Luc. Moral., p. 2, tr. 41, no. 56.

(8) Lib. 6, no. 35, v. Hinc.

(9) 3, p. 64, art. 6, ad 3.

(10) Lib. 6, no. 52.

(11) No. 34.

(12) No. 255.

(13) Lib. 5, no. 60, Quær. 6.

(14) Lib. 6, no. 35.

[*Latin ed. p. 763*]

OF THE SACRAMENTS IN GENERAL. 751 Those, and the Eucharist, are the only moral acts, and the only communion (1). 14. — Deacons and subdeacons, if they minister at the altar while being in mortal sin, according to some, probably sin gravely; but according to the more common opinion, and what is quite probable, this is denied; because they do not confect, nor administer, the sacrament, nor do they exercise functions immediately ordained for the sanctification of the soul (2). Furthermore, a preacher who preaches while in mortal sin does not gravely sin, as commonly and probably taught by Gonet, Lugo, Castrop, Bon., Vasq., Salm., Croix, and others (against Merbes, Juven., etc.); because he does not exercise the Order, but an office annexed to the Order, which of itself does not cause grace, as the sacraments do (3). 15. — The minister sins gravely if he secretly gives the sacrament to one who is unworthy, but not if that person is a hidden sinner and publicly asks for it (4). It should be noted that even the bishop can deny someone the reception of the Order for hidden sins, even if that person publicly asks for it, according to Trid. sess. 14. c. 1. de Reform., where it is said that a cleric must obey a prelate who forbids the reception of the Order for a hidden crime. Nor is the bishop then obliged to manifest the reason why he refuses to ordain, as the Holy Congregation of the Council has declared on several occasions (5). Whether a confessor can absolve a recidivist in grave sins who wants to receive the sacred Order

without prior penance, see what is said in tract. 7, no. 48, and in the last tract, nos. 16 and 17. 16. — It is not permissible for a minister to simulate the administration of the sacrament, even out of fear of death, according to proposition 29, promulgated by Innocent XI. However, the minister is considered to be simulating the administration when he pronounces the form without intention, or says something else, in order that others may believe that he is already conferring the sacrament; therefore, it is permissible for a confessor to recite a prayer over a penitent who is indisposed, not in order that others may believe that absolution is being administered to him, but only to conceal the denial of absolution; for then he is not simulating the administration of the sacrament, but only concealing the truth (6). Furthermore, it is said that the Cardinal can rightly say to a penitent who threatens him with death if he does not absolve him: "I do not absolve you," pronouncing the word "no" submissively, because this is not a purely mental restriction (as Viva objects), since the confessor is not obliged to ensure that the penitent hears the words of absolution; and therefore, he has no right to require that the confessor pronounce all the words of the form intelligibly (7). 17. — Just as it is not permissible for a minister to simulate the administration of the sacrament, so neither is it permissible for others to simulate the reception of the sacrament, as say Cardinals Croix and Gormaz. However, this does not prevent it from being permissible for someone to approach the confessional and there to kneel for some business to be done. Furthermore, Sanch., Conc., Castrop, Carden., Viva, Croix, and others commonly say, against Milante, that if one of the parties is forced by unjust fear, or has a dispending impediment, to contract marriage, in order to avoid scandal, then that person may (at least without grave guilt) simulate the celebration of marriage; for then, if there is a lack of consent, the contract fails, and if the contract fails, the sacrament also does not exist (8). 18. — The minister invalidly administers the sacrament if he does not intend to perform, by the external act he performs, what the Church intends, and if he does not use the sacramental rite that the Church intends, which was instituted by Christ; and this is true even if the minister, not in jest (as Luther still foolishly admitted), but seriously, ministers (1).

(1) Lib. 6. n. 35.

(2) N. 37 et 38.

(3) N. 40. v. Quæritur autem.

(4) N. 43 ad 5r.

(5) N. 52.

(6) N. 59.

(7) Ibid. v. E converso.

(8) N. 60.

[*Latin ed. p. 764*]

752 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. As we have demonstrated in treatise 14, paragraph 2, and see in the Moral Theology (1). But if he intends this, he validly administers [the sacrament], even if he does not have an explicit intention of conferring the sacrament. I say he does not have an explicit intention; for if he positively intended not to confer the sacrament, then he would not confer it, because in that case he would truly have no intention of doing what the Church does (2). However, a priest who administers sacramental things, such as blessed water, to a dying person, does not commit a grave sin (3).

19. — Question III. What is required in order for someone to validly and licitly receive the sacraments? In order to validly receive, it is required that: 1. He be baptized, for otherwise he is not capable of receiving the other sacraments. 2. Except for the sacrament of Baptism, for which no intention is required in infants and those perpetually insane, since in them the intention of the Church suffices; in other sacraments, it is necessary that the recipient at least have the prior intention (which is called habitual) of receiving the sacrament, and that he not revoke it, as we said above in paragraph 9. Therefore, if someone is ordained by force, he would not be validly ordained; on the other hand, if by fear, because fear does not remove the voluntary act. It is highly probable that the sacraments can be licitly conferred upon those in mortal danger, both the drunk and those insane, if they have the prior intention of receiving them; so say Lugo, Castr, Salm, Croix, Cardinal Lambertinus, etc., from St. Thomas, and in the *Capita*, § *De Veritate Baptismi* (4). It is also sufficient, in the case of death, to have an interpretative intention in the recipient who is deprived of his senses regarding the sacraments of Extreme Unction, as is stated in the Ritual, and also of Confirmation and the Eucharist, as say Lugo, Coninc, Sporer, Croix, etc.; but not regarding Baptism and Holy Orders, and much less regarding Penance and Matrimony, in which a real intention, or at least a virtual one, is absolutely required (5). In order, however, for someone to licitly receive the sacraments, a suitable disposition is required, namely, the state of grace; therefore, if someone is in mortal sin, he must at least be contrite with the purpose of confessing. Indeed, to receive the Eucharist, prior confession is required, unless necessity compels, and a confessor is not available; in which case, the priest who celebrated must, as soon as possible, confess, as stated in the Council of Trent, Session 13, chapter 7, on the Eucharist. Necessity will be present in the following cases: 1. To give viaticum; 2. To avoid infamy or scandal; 3. If he is a parish priest and the feast of precept occurs; 4. If the celebrant, after consecration, remembers a mortal sin (6). Furthermore, it should be noted that a person who receives the sacrament of Penance without disposition does not only receive it illicitly, but also

invalidly, since the contrition of the penitent is also the matter of this sacrament. With regard to the other sacraments, if someone receives them when indisposed, he receives them validly, so that, once the pretense or obstacle of sin is removed, they revive, that is, they produce grace, as teach many from St. Thomas (7).

20. — Question IV. Is it permissible to ask for the sacraments from a sinful priest or an excommunicated person? It is not permissible from a sinner (although he is a parish priest, whatever others may say), unless there is a just cause; a grave reason suffices (8), as commonly taught by Suarez, Sanchez, Scotus, Palearius, Tollet, Anacleto, Holzmeister, Salm, etc. Therefore, it is said that it is permissible to ask for them: 1. If the precept of confession or communion, or Mass, is urgent; or if an indulgence is to be gained; 2. If one must otherwise miss a jubilee; 3. If one must otherwise remain in mortal sin, even for an hour; as say Suarez and Escobedo. 4. If one must be long without the fruit of Communion (1) Lib. 6. n. 20 to 26. — (2) Ibid. n. 29. — (3) N. 40. — (4) N. 81. v. Utrum. — (5) N. 82. — (6) N. 258. — (7) N. 87. — (8) N. 89.

[*Latin ed. p. 765*]

OF THE SACRAMENTS IN GENERAL. 753. Communion, or Confession, etc. It is permissible to receive the sacrament from an excommunicated person, even absolutely, without any other cause, if he has been tolerated, because the Council of Constance absolutely decreed that the faithful can communicate with tolerated persons (1). However, even in the case of someone avoiding [penance], it is not permissible to receive the Sacrament of Penance, because (as we said in n. 11), even in extreme necessity, he administers it invalidly. 21. — It is asked whether money can be given for the administration of the sacrament, if the minister does not want to give it freely? St. Thomas (2) seems to deny this, stating that an adult cannot, even at the point of death, offer anything to obtain Baptism, and that it suffices for his salvation to receive Baptism itself. But whatever the understanding of this doctrine of the Angelic Doctor may be, commonly Bona, Salm, and Ronc. (3), along with Suarez, Lessius, Sanchius, Laym, Castrop, and others, affirm that money can be given in extreme necessity, and even in grave necessity of the sacrament. The reason is that, on the one hand, the giving of money is not intrinsically evil, for it is a material, not a formal, cooperation, since it is not cooperating with the minister's wicked will, according to what is said in tract. 4, n. 31 and 32. On the other hand, the recipient does not commit simony, since he is not giving money to buy the sacrament, but only to remove the vexation of a minister unjustly denying the sacrament; and therefore, he is giving something temporal for a purely temporal matter; and this is all the more true if the recipient is a faithful person, because then he has a right to the sacrament, as St. Thomas (4) teaches, that after a right has been acquired, it is permissible for anyone to

give money to remove an unjust impediment. This is admitted by Suarez, Filliucius, and Croix, not only for obtaining Baptism and Penance, but also for Viaticum; and Bona extends it even to Extreme Unction. 22. — On the effect of the sacraments. The effect of the sacraments is twofold: the conferral of grace, and the impression of a character. Therefore, the first effect is grace; and two kinds of grace are conferred in the sacraments: sanctifying grace, which makes a person a friend of God; and sacramental grace, which is proper and peculiar to each sacrament, to cause its proper effect, namely, Baptism to cleanse from sins; Confirmation, to strengthen in faith; the Eucharist, to nourish the soul; Penance, to remit sins; Extreme Unction, to provide strength against the temptations of demons in the final struggle; Holy Orders, to confer the helps so that the ordained may properly exercise their duties; and Matrimony, so that spouses may well bear and fulfill the burdens and obligations thereof. 23. The sacraments, in a person who is disposed, cause grace *ex opere operato*, that is, by the very act itself, not by the act of the one performing it, that is, by the merit of the recipient. But do they cause this physically, so that the material of the sacrament, namely, water, oil, etc., although it is only a natural cause, is elevated by God to cause grace, as St. Thomas teaches? Or only morally, so that, given the sacrament, God, through Himself, confers grace, as Scotus wants? Both opinions are probable (5). But the sacraments of the dead, such as Baptism and Penance, have the power to cause original grace. The other sacraments, which are for the living, only cause an increase of grace; but sometimes, in those who think they are contrite, they also cause original grace, as St. Thomas teaches in his works on the Eucharist and on Extreme Unction (1). Lib. 6. n. 88. — (2) 2. 2. q. 100. a. 2. ad r. — (3) Bon. de Sim. D. 1. q. 4. 2. 1. n. 2. Salm. tr. 19. eod. tit. c. 2. n. 12. Rone. eod. tit. pag. 211, in Præc. n. 5. — (4) 2. 2. q. 100. a. 2. ad 5. — (5) Lib. 6. n. 7. 48.

[*Latin ed. p. 766*]

754 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. and following: Gonet, Concina, Ronc, Suar, Bonac, Salm. (1). 24.— One effect of the sacraments is the character. And the character is "a certain spiritual and indelible seal imprinted on the soul of the recipient of the sacrament." This is imprinted only in Baptism, Confirmation, and Holy Orders; and it signifies the power, or dignity, conferred by such sacraments: for in Baptism, it is the seal of Christ's sheep, by which the faithful are made fit to receive other sacraments; in Confirmation, it is the seal of Christ's soldiers, by which they receive strength to constantly profess the faith; in Holy Orders, it is the seal of Christ's ministers, by which they acquire the power to administer the sacraments to the faithful. Furthermore, the character is imprinted even in a sacrament illicitly received, and is not lost through sin. It should also be noted that from Baptism and Confirmation arises another effect, namely, the impediment of spiritual affinity, which prevents mar-

riage between the baptizer and the baptized, between the godparents and the baptized, and between the recipient (or godparent) and the recipient, and between the godparents and the recipient's parents. CHAPTER II. On the Sacrament of Holy Orders in General. 28. What is an order? 26. What is ordination? 27. How many orders are there; and is the episcopate a distinct order? 28. Are the individual orders sacraments? 29. What are the matter and form of Holy Orders; and concerning the physical and simultaneous act? 30. Who is the minister? 31. Effects. 32. Requirements for valid ordination. 33. What is required for licit ordination: I. Confirmation; II. That he is not infamous, etc. Concerning the bishop's declaration, etc.; III. The intention to ordain; IV. That it be by the proper bishop, etc. 34. Who is the proper bishop. From whom do religious receive ordination, etc., with dispensation. 35 and 36. V. Knowledge. 37 and 38. VI. Title, and how much title is required. 39. Concerning fictitious patrimony. 40. VII. That the lower order be received before the higher order. 44. X. Place. XI. Age. 45. XII. Exercise of the order received. XIII. Divine vocation. 46. Those who incur suspension, etc. 25.—According to St. Thomas, an order is a sign of the Church by which the power of spiritual ordination is transmitted. It is a matter of faith that Holy Orders is a sacrament, as is evident from the Council of Trent, Session 23, Chapter 3. For in Holy Orders, there are already three requirements for a sacrament: an external sign, which is the laying on of hands; the institution by Christ, as found in Luke 22:19, "Do this in remembrance of me"; and the promise of grace, as found in 2 Timothy 1:6, "For which cause I admonish thee that thou stir up the grace of God which is in thee by the imposition of my hands." 26.—However, Holy Orders differs from ordination. An order is the power itself that is transmitted; ordination is the act by which the bishop transmits that power. Therefore, the priesthood is a sacrament in being, that is, in the act of ordination, but not in essence, that is, when one is already ordained. 27. There are seven orders, some lesser, some greater. The lesser orders are four: the order of doorkeeper, the order of lector, the order of exorcist, and the order of acolyte. The greater orders are three: the order of subdeacon, the order of deacon, and the order of priest. Furthermore, many doctors probably add the order of bishop, and this is held very probably and commonly by Bellarmine, Sanchez, Habert, Tournhem, etc., since the episcopate is reasonably distinguished from the priesthood because of the distinct power conferred upon the bishop to confer the power of consecrating the Body of Christ and of absolving the faithful from sins (2). 28.—It is questioned: Are the individual orders sacraments? The priesthood

[*Latin ed. p. 767*]

OF THE SACRAMENT OF HOLY ORDERS IN GENERAL. 755 It is a matter of faith that Holy Orders is a sacrament. It is certain that the sacrament of the diaconate is also a bacterium, but this is not a matter of faith.

It is, however, quite probable that the other orders are also sacraments, as seen from St. Thomas, who observes that each order seems to have its own matter and form assigned to it. All seven orders (according to this view) constitute only one sacrament, due to the unity of their purpose, since each is ordained to perform the sacrifice of the Mass; and all are understood to have been instituted by Christ with those words: "Do this in memory of me." In the order of the priesthood, others are either eminently contained, as are the lower orders, or are subsequent in relation to the episcopate. However, it is more probable that the other orders (other than the presbyterate and diaconate, as we have said) are not sacraments; because they lack the matter, namely, the laying on of hands, which, as we will soon say, is probably the only matter of the Order; and they also lack the form, which expresses the infusion of grace, since in the conferring of these lower orders, no mention of grace is made, but only of the power that is conferred (1). This question has been discussed more fully in treatise 17, paragraphs 14 and 29. — We inquire: What is the matter and form of Holy Orders? There are three opinions: 1. It is held that the matter of Holy Orders is solely the tradition of the instruments; but this is not sufficiently probable. 2. It is held that the proximate matter is twofold and integral, namely, the tradition of the instruments, by which power is conferred over the real body of Jesus Christ for the purpose of sacrifice, with the formula: "Receive power," etc., and the laying on of hands, by which power is conferred over the mystical body for the absolution of sins, with the formula: "Receive the Holy Spirit," etc. The remote matter (according to this view) is the hands of the bishop, and the instruments which are delivered to him for touching. 3. It is held that the matter is solely the laying on of hands, and the form is the prayer which the bishop recites. (How this is proven, see what is said in the cited treatise 17, paragraph 16.) However, since the second opinion is also probable, namely, that the matter of Holy Orders is twofold, namely, the laying on of hands and the tradition of the instruments, it must be followed entirely in practice. Therefore, it is necessary in the ordination that the instruments be touched, and that the touch be physical, since it is also probable that a moral touch is not sufficient; it is sufficient, however, to touch with only the hand, or a finger (2). However, we have said (paragraph 6) that it is not necessary that the contact be made from the beginning of the utterance of the formula until the end, but it is sufficient if it is made before the formula is completed, or after it has begun. The form is the language spoken by the bishop who is ordaining, as he lays his hands and delivers the instruments, as mentioned above. It should be noted here again that 1. in the conferring of the sacred order, the matter must be delivered by the same bishop who pronounces the formula; otherwise, in the conferring of the lower orders; thus St. Thomas (3) and others. It should be noted 2. that if the orders are conferred by one bishop, but celebrated by another, the ordination will be valid, but illicit, as declared by Innocent XIII, apud

Benedict XIV (4). 30. — We inquire: Who is the minister of Holy Orders? The ordinary minister of this sacrament is only the bishop. However, the Pope can grant to a simple priest the power to confer the lower orders, as abbots with the tonsure have, but only for their own subjects who are regularly professed, or novices; not for secular clergy, as is now certain (1) Lib. 6. paragraphs 736 and 757. — (2) Paragraph 759. — (3) Suppl. q. 38. à 1. ad 2. (4) De Syn. 1. 8. c. 11. paragraphs 6 and 7.

[*Latin ed. p. 768*]

756 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. According to the decree of the Holy Council, approved by Urban VIII, which commanded that it be observed "inviolably," and rejecting all contrary opinions (1): see the statements in Tract 20, on Privileges, no. 117. However, those ordained by abbots, if they are subject to them, or if they have letters of dispensation from their own ordinary to the abbots, are ordained illicitly and incur suspension; but they are validly ordained, as the Holy Council declared: see the statements in the same tract, no. 120. 31. — Question IV: What are the effects of Holy Orders? There are three: 1. The conferral of the sanctifying grace, that is, the grace conferred in every sacrament, as we said in no. 22, and of the sacramental grace, namely, special assistance for the proper exercise of the order; 2. The conferral of the power to exercise the functions of the order received; 3. The impression of an indelible character, because the conferral of no order can be iterated. 32. — Question V: What is required for someone to be validly and licitly ordained? To be validly ordained, it is required that: 1. He be a cleric; 2. He be a male: for women are not capable of the sacrament of Holy Orders; 3. He be baptized; 4. He have at least a habitual intention (according to the statements in no. 9) of receiving Holy Orders. 33. — To be licitly ordained, it is required that: 1. He be confirmed: but this is not under a grave precept, as the common opinion holds (2). Regarding the obligation of each faithful to receive Confirmation, see the statements in Tract 14, no. 17, at the end. 2. He be not a neophyte, nor infamous, nor irregular. It is doubted here whether someone who is entangled in irregularity will be validly ordained, if the bishop precedes with a declaration (as is customary) that he does not intend to ordain irregulars, excommunicated persons, etc.? I answer, in doubt, (whatever others may say), it must be absolutely said that the ordination must be repeated, unless it is clear that the bishop uttered those words only to terrify, and that his intention was not at all bound by the declaration (3). 3. It is required that he have the intention of being ordained, as is prescribed in Trident, Session 23, chapter 4, that is, of ascending to the higher orders. However, it must be understood that this applies when someone accepts a benefice for which the priesthood, or another sacred order, is required (4). 4. It is required that each person be ordained by his own bishop, or by another, but with letters of dispensation from his own bishop,

if the latter is impeded by infirmity, or another just cause. However, a chapter, when vacant, cannot today (whatever may have been in ancient times) grant dispensations to anyone, unless that person is bound to receive the order because of a benefice requiring personal service (5). 34. — A bishop is said to be the proper bishop either by reason of origin, or of domicile, or of benefice, and of familiarity. And 1. The orders should be received from the bishop of origin, if the person to be ordained was born in his diocese, and his parents resided there at the time of his birth; for if he were born by chance elsewhere, and his parents resided elsewhere, then he is said to be of that place, and he should be ordained by the bishop of the place where his parents reside. 2. By reason of domicile, one is properly ordained who has established his residence in a certain place, with the intention of remaining there permanently. This intention is proven either by residence for ten years, or by the construction of a house with the removal of the greater part of his possessions, and by living there for a notable period of time, as is stated in the bull Speculatores (6). 3. By reason of a benefice, it is permissible (1) Lib. 6, no. 761, 763, and 764. — (2) No. 786. — (3) No. 784, see question here. — (4) No. 785. — (5) No. 788. — (6) No. 770, see V. Ille.

[*Latin ed. p. 769*]

OF THE SACRAMENT OF HOLY ORDERS IN GENERAL. 757. If someone is born elsewhere and resides elsewhere, he can be ordained by a bishop in whose diocese he holds a benefice sufficient for his proper support, provided he has obtained testimonial letters from the bishop of his domicile, from whom he may be examined if he intends to return there, according to the Apostolic Mandate. However, it must be noted that in order for someone to be ordained by a bishop, he must at least have been tonsured; otherwise, he is not capable of receiving a benefice, and therefore not eligible to receive the orders from that bishop. 4. Finally, by reason of familiarity, if someone has remained for three years in the family, or in the constant service of a bishop, living at the bishop's expense, even if he does not live in the bishop's house, he can be ordained by that bishop, provided he resides in the place where the bishop is, or nearby, and provided the bishop immediately confers a true benefice upon him; for it is not sufficient if he assigns a pension or an estate (1). Regular clergy, however, are to be ordained by the bishop of the diocese where they reside, if the bishop has the authority to ordain at the prescribed times; otherwise, they can be ordained by any bishop. See what is said on this matter in treatise 20, no. 113. 35. V. Suitable knowledge is required for receiving Holy Orders; the Council of Trent, for those to be initiated into the minor order of tonsure, requires only that they "have been taught the fundamentals of the faith, and know how to read and write." Session 23, chapter 4. For those to be initiated into the minor orders, "that they understand the Latin

language," ibid., chapter 11. For those to be initiated into the subdiaconate and diaconate, "that they are instructed in letters, and in those things that pertain to the exercise of the order." Chapter 13. Finally, for those to be initiated into the priesthood, "that they are proven to be suitable by diligent examination to teach to the people those things which it is necessary for all to know for salvation, and to administer the sacraments." Ibid., chapter 14. Those to be ordained and those who ordain should note those words, pertaining to the administration of the sacraments; for that is why the Doctors say that those to be ordained into the priesthood must know not only what pertains to Baptism, the Eucharist, etc., but also to Penance: for although a priest to be ordained does not require as much knowledge as an approved confessor, he must nevertheless know at least the universal moral principles, by which he can resolve doubts commonly occurring in cases of necessity in which he is bound to receive the confession of the dying; and he must certainly know how he ought to behave with those who are near death, namely, 1. when they can absolve them, even in the presence of an approved confessor; 2. when absolutely, and when conditionally; 3. Whether only in articulo mortis, but also in danger of death, and in what kind of danger? 4. What he must impose upon the sick, if they have sins or censures reserved? See what is briefly said below on this obligation, no. 130. Furthermore, a bishop can rightly require of his candidates a greater knowledge than that required by the Council (2). 36. However, in regular clergy devoted to a contemplative life, or only to the choir and altar, or to the sacristy, less knowledge is required, provided they know how to perform what pertains to the exercise of the order; and therefore they must at least be taught in grammar, otherwise they will be irregular, even by divine law, so that not even the Pope could dispense for them. However, this irregularity, removed the cause of ignorance, is removed from them without dispensation (3). 37. — VI. A title of support is required; otherwise, the bishop who grants the order or the dispensation is bound to support the ordained, until he (1) Lib. 6. n. 770. v. VI. Ut. — (2) N. 793. v. Advertend. 2. — (3) N. 791. Quær. 2 et 3.

[*Latin ed. p. 770*]

758 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. He must possess a title; thus, according to chapter 2, concerning Deacons, and chapter Recipimus, concerning Age and Qualifications, etc. However, it must be understood that, unless the bishop has been culpably deceived, or unless the candidate already possesses from elsewhere a means of support (1). 38. — The title of support can be of three kinds: poverty, benefice, and patrimony. Those who have professed poverty alone are to be ordained. Secular clergy, however, must be ordained with a benefice, which must be certain in the present, and sufficient for a proper livelihood, according to the standards of the diocese of Orense, or a benefice, provided

that the benefice requires residence (2). Note that the Sacred Congregation, on July 17, 1723, left it to the discretion of the bishop whether or not to deduct the offerings for masses from the benefice or chaplaincy (3). However, for the title of patrimony, bishops can only ordain secular clergy out of necessity or for the benefit of their own churches, as prescribed by the Council of Trent, Session 21, chapter 2, concerning reforms. The patrimony must consist of a certain and stable property, of its own productive nature, peacefully possessed and free from all burdens. A perpetual income, even if redeemable, is also sufficient (4). 39. — Here, the following are questioned: 1. Does one incur suspension who is ordained with a fictitious patrimony? Some probably deny this; but others more probably affirm it; and this is certain in the diocese of Naples (5). It is questioned 2. Whether, according to the more probable opinion mentioned above, one also incurs suspension who is ordained with a true patrimony, but with a promise, or a condition, of returning it to the donor after ordination? I distinguish: if the donor truly intended to give, there is no suspension; because that agreement regarding the return of the patrimony is considered null, as the Sacred Congregation declared (and furthermore, the Sacred Congregation has repeatedly declared that any alienation of patrimony without the bishop's permission is invalid). Otherwise, if the donor did not intend to give, because then the recipient has not acquired any ownership of the property (6). 40. — VII. It is required "that the lower order be received before the higher order," otherwise, he who is ordained in a manner that skips an order incurs suspension by the very act of receiving the order, until the bishop grants dispensation (7). VIII. That the orders be received at the proper time. The higher orders can only be received on the four Saturdays of the year, on the Saturday before Passion Sunday, and on Holy Saturday. The lower orders, however, can be received on any feast day of precept, and also on the Friday before the general Saturday of ordination, and on the Thursday of the four Saturdays, according to the accepted custom. Nevertheless, in Fer. Biblioth. vol. 5, under the word "Ordo," article 2, number 7, a decree of the Sacred Congregation of April 13, 1720, is cited, which states that, with regard to the lower orders, the custom of administering them the day before, on Friday after dinner, can be tolerated if it is immemorial; but it is advisable for the bishop to conform to the Roman Pontifical. He who is ordained outside of these times incurs suspension by the very act (8). 41. — IX. It is required that the orders be received with proper intervals of time. And 1. Between the lower orders, some interval is required: it is called "some," because it is not precisely determined by Trent, in Session 23, chapter 11, where it is also added: "Unless it appears to the bishop that something else is more expedient." However, the bishop can freely confer the first tonsure with some lower order. 2. That one should proceed from the lower orders to the subdiaconate, (1) Lib. 6, n. 812. — (2) N. 815 and 816. — (3) N. 774. — (4) N. 817. — (5) N. 820 and 821. — (6) N. 822 to 824. — (7) N. 793. — (8) N.

794.

[*Latin ed. p. 771*]

OF THE SACRAMENT OF HOLY ORDERS IN GENERAL. 759 A period of time is required: "Unless necessity, or the benefit of the Church (understood as the one to whom the ordination is to be conferred), demands otherwise, according to the judgment of the bishop," as stated in the Council of Trent (Tridentinum), session 3, decree 3. For advancement from subdiaconate to deaconate, a period of time is also required; but the bishop can dispense with this for a reasonable cause; for in the Council of Trent, chapter 13, it is said: "Unless the bishop sees fit otherwise." 4. Finally, for advancement from deaconate to priesthood, at least a certain period of time is required, "unless, for the benefit of the Church, or necessity, the bishop sees fit otherwise," as in the Council of Trent, chapter 14. Note here that "benefit" and "necessity" refer to a moral necessity, namely, a notable and certain benefit to the particular Church. 42. — Hence, it should be noted: 1. That one who receives two sacred orders on the same day incurs suspension from the last order received, and also irregularity (1). However, one who would receive four minor orders together with subdiaconate on the same day would indeed sin gravely, but would not incur suspension (2). It should be noted 2. That if someone is ordained without observing the prescribed intervals, but on different days and at legitimate times, he also sins gravely, but it is less likely that he would incur suspension (3). It should be noted 3. That religious, by virtue of their pontifical privileges, can be ordained outside the prescribed times with the permission of their superiors, as stated in treatise 20, on Privileges, paragraphs 115 and 116. However, they should be ordained on a feast day of precept, as is more probable (4). It should be noted 4. That if someone were to receive the priesthood, omitting the diaconate, he would indeed be validly ordained, but he would not be able to exercise the priesthood unless he first received the diaconate, as stated in chapter 1 of the De Clericis a Patere. But if someone were to receive the episcopate without having received the priesthood, he would be invalidly ordained. 43. — X. A place of ordination is required, namely, that it be performed in a church, and that the bishop reside in his own diocese: for if the bishop were to ordain in another diocese, he himself would incur suspension from pontifical functions, and the one ordained would be deprived of the exercise of the order received (5). XI. A proper age is required, which for the first tonsure must be seven years, and in Naples, at least ten. Minor orders can regularly be conferred from the age of 7 to 14; subdiaconate at the age of 22; deaconate at the age of 23; priesthood at the age of 25; as stated in the Council of Trent, session 23, canon 12. Age is counted not from the day of baptism, but from the date of birth. However, it is sufficient that the year has begun, as is the common practice. For the reception of simple benefices, the age of 14 is sufficient, according

to the Council of Trent, session 23, canon 6. But if the benefice is a cure, the age of 25 is required, according to the Council of Trent, session 24, canon 12. For a canonry, the age of 22 is required, according to the Council of Trent, session 24, canon 12, although for collegiate churches, the age of 14 is sufficient. Finally, for the episcopate, the age of 30 is required (6). 44. — It should be noted that if someone is ordained knowingly before the legitimate age, he thereby incurs perpetual suspension, from which he cannot be absolved except by the Pope, or by a bishop if it was concealed, according to chapter "It is permitted," Council of Trent, session 24, canon 6 (7). We said "knowingly," because Pope Pius II imposed this suspension only on those who are ordained out of recklessness: hence, crass ignorance probably excuses them from it, so that when they reach the proper age, they can properly exercise the order (8). But does one who receives the priesthood before the proper age incur irregularity? Some affirm that he does, because (as they say) he is a "neo- (1) Book 6, paragraph 796. — (2) Paragraph 797 and ibid. Doubt 2. — (3) Paragraph 796, version, Doubt 2. — (4) Paragraph 797, Doubt 4. — (5) Paragraph 798, version, Addendum. — (6) Paragraph 799. — (7) Cited in paragraph 799. — (8) Ibid., Note 2, and v. But here, Doubt 2.

[*Latin ed. p. 772*]

760 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. A priest, concelebrating with the bishop, truly consecrates [the elements]; and therefore, he already exercises the order he has received, albeit with a suspension. However, others more commonly and with strong probability deny this; because it does not seem just that one should incur a double penalty through the same moral action, namely suspension and irregularity; and Suarez testifies that those ordained in this manner are not considered irregular. The same should be said of deacons and subdeacons; unless they exercise the order they have already received in the same Mass of ordination, because then they do not avoid irregularity, at least if they willingly offer themselves to minister in the Mass of ordination (1). 45. — XII. In order to be admitted to a higher order, it is required that one has exercised the order previously received; but according to Salm. (2), this is not a matter of grave obligation. XIII. Finally, divine vocation is required, from the Apostle: "Neither doth any man take the honour to himself, but he that is called by God, as Aaron was." Hebrews 5:4. The signs of divine vocation are: 1.suitable knowledge; 2. a sincere intention of dedicating oneself to God and the salvation of souls; 3. a virtuous life, which is most necessary for recognizing a true vocation, as taught by the Council of Trent: "However, let the bishops know... that only those of worthy character and advanced in years should be admitted to these orders." Session 23, chapter 12. And as D. Thomas teaches (3), saying: "It is not enough to have any kind of goodness; but an excellent goodness is required; " giving this reason: "Just as those

who receive the order over the people are constituted, so too should those in higher orders be meritorious in sanctity." Therefore, if someone, without these signs, and consequently without divine vocation, ascends to the altar, he cannot excuse himself from a grave fault, both because of the grave presumption by which he intrudes himself into the sacred ministry, as St. Anselm says: "For he who intrudes himself, and seeks his upon glory, robs God of His grace, and therefore does not receive a blessing, but a curse." Also, because of the great danger of damnation to which he exposes himself, as the wise Bishop Abelly says: "He who, knowing that he has no divine vocation, intrudes himself into the priesthood, undoubtedly throws himself into open danger of salvation." And bishops sin gravely who admit such individuals to the orders, transgressing that precept of the Apostle: "Impose not hands lightly upon any man, neither be partaker of other men's sins. Keep thyself chaste." 1 Timothy 5:22. These words, explaining St. Leo, in Epistle 1 (also 87) to Afric., said: "What is it to be partaker of other men's sins, if not to make the one who ordains such a person, as he who does not deserve to be ordained?" Therefore, in chapter Nullus, dist. 24, it is universally prescribed to bishops: No one is ordained unless he has been proven. 46. — It is also necessary here to note who, of those mentioned above, incur suspension by the very fact of being irregularly ordained. They incur it: 1.those who are ordained without the permission of their ordinary, or without his testimonial letters, when they are ordained by a bishop of a benefice; 2.those who receive two sacred orders on the same day; 3.those who are ordained outside of the proper times; 4.those who are ordained by a bishop remaining in another diocese, without the permission of the local bishop; 5.those who are knowingly ordained before the legitimate age; 6.those who are ordained by jumping over the preceding order. Finally, those who are ordained through simony; for they remain suspended from the order received through simony, and are prevented from ascending to higher orders; however, this does not apply if the simony was committed by another, without the knowledge of the ordained (4). (1) Lib. 6. n. 999. Dubit. 5. — (2) De Ord. c. 4. n. 74. — (3) Suppl. q. 55. a. 1. ad 5. — (4) See 1. 3. n. 109.

[*Latin ed. p. 773*]

FIRST TONURE. CHAPTER III. OF ORDERS IN NAME ONLY. ARTICLE I. Concerning the first tonsure. 47. What is the first tonsure? And is it an order? Can someone be ordained without tonsure? — 48. Privileges of the tonsured. — 49 and 50. Concerning the obligation of wearing the habit and the tonsure. — 51. Those deprived of the privileges of the forum and canon. 47.—The first tonsure is not an order, but a preparation or disposition for orders, since it has no function concerning the ministry at the altar; thus, generally, the theologians agree with St. Thomas (1). And this is proven from the Council of Trent, Session 23, chapter 2, concerning

Orders, where the reception of the tonsure is prescribed, and it is said: "So that those who have already been marked with the clerical tonsure may ascend from the lesser to the greater [orders]." Therefore, the tonsure is not counted among the orders in any way (2). The term "cleric" signifies one called to a particular purpose, namely, to render service to God. The hair is cut in the manner of a crown, to signify the royal dignity of those called to the Lord's service. The Roman Catechism states that St. Peter instituted the first tonsure. To be able to receive the tonsure, it is required that one: 1. be a male; 2. be confirmed; 3. know how to read and write, and at least the rudiments of grammar, in addition to the fundamentals of the faith; 4. have a desire to serve God. He who is ordained without tonsure indeed sins gravely against the decree of the Council of Trent, but is validly ordained: however, he remains suspended until the bishop's pleasure. But he who has already received an order without the first tonsure is not obliged to receive it afterwards, because, by having received the order, he has already become suitable for receiving others. 48.—The effects and privileges of the tonsured are these: 1. The tonsured is transferred to the clerical state, from which he acquires the privilege of the forum, by which he is exempted from the jurisdiction of the secular forum, provided he wears the habit and the tonsure, and serves some church by order of the bishop, or is in a seminary, or in some school with the bishop's permission, as is stated in the Council of Trent, Session 23, chapter 6, concerning Reforms. 2. He also acquires the privilege of the canon, so that those who strike him in a legal manner incur excommunication reserved to the Pope, if the striking is severe, and to the bishop, if it is slight. 3. The tonsured becomes capable of receiving ecclesiastical benefices; provided he is 14 years old. 4. He also becomes capable of all ecclesiastical jurisdiction for conferring benefices, imposing censures, and judging spiritual causes. 49.—The question is raised here as to how clerics sin, and what penalties they incur, by not wearing the habit or the tonsure, and when are they deprived of the privileges of the forum and canon because of this? Clerics in the lower orders, as the doctors commonly say, do not sin gravely if they do not wear the habit and the tonsure; indeed, commonly Soto, Navarrus, Arminius, Castrop, Escobar, Holzmüller, etc., excuse them from all guilt, according to the bull of Sixtus V, Pastoralis, January 31, 1538. For therein, clerics are declared to be obliged to wear the habit only those who receive a pension, or other ecclesiastical goods, exceeding the value of 60 gold florins per year from the royal treasury. However, clerics who are beneficed, or who are established in sacred duties, do indeed sin gravely if they lay aside the habit, as commonly taught by Sanchez, Laym, Castrop, Bona, Salm, etc. (whatever Cajetan, Escobar, and Gobinus may say), while in the Council of Trent, Session 14, chapter 6, those who do not wear the habit are accused of temerity. However, it is

very probably denied (1) Suppl. q. 46. a. 2. — (2) See 1. 6. p. 754.

[*Latin ed. p. 774*]

762 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. All the aforementioned authors maintain that those who abandon their clerical attire, even for a short time, or for a just reason such as avoiding some grave harm, do not sin. This pertains to culpability. Regarding penalties, the Council states in the aforementioned passage: "If, after being warned by their bishop, they do not present the honest clerical habit, which is appropriate for their order and dignity, and which they have not brought according to the bishop's ordination and mandate, they must be coerced by suspension from the orders, and from office and benefice, and by the forfeiture of the revenues and emoluments of their benefices; and if they have once been corrected in this matter, they must also be coerced by the deprivation of offices and benefices..." From this, it is clear that these penalties are only to be imposed when a judgment is rendered. This is not hindered by the bull of Sixtus V, "Cum sacrosancta," issued on January 9, 1588, which states that those who hold benefices and do not wear the habit are, by law, deprived of their benefices; for this provision was made only for the city of Rome, and only after they have not obeyed the mandates within a specified time (1).

50. Regarding the habit, Sanchez, Laym, Escobedo, and others speak of the tonsure, or crown. However, others, such as Castrop, Henriq, Renz, and Tambini, along with March, do not consider those in holy orders, or those holding benefices, to be guilty of mortal sin if they do not wear the tonsure, unless they omit it out of contempt. Furthermore, Lacroix rightly states that those who do not wear the tonsure are more easily excused than those who do not wear the habit; therefore, this author does not condemn a priest who does not wear the tonsure for 6 or 8 weeks as being guilty of mortal sin (2).

51. Those holding benefices, as well as those who are instituted in holy orders, are deprived of their privileges, both by the law of the forum and by canon law, if they do not resume wearing the habit after a third warning, as stated in chapter 45 of the Decretum, concerning excommunication (3). However, those who are simply tonsured, or those who are only promoted to the minor orders without a benefice, do not commit a grave sin if they do not actually wear the habit, but they do not enjoy the privilege of the forum if they do not serve the Church, as stated in Session 23, chapter 6 of the Council of Trent, concerning reforms (4). They do, however, always enjoy the privilege and are excused if they resume wearing the habit, unless they do so fraudulently, such as if they are already suspected of being criminals in prison, or if they have already been summoned to a civil court (5). However, the doctors differ regarding the privilege of canon law (6). Does one sin who receives the tonsure in order to obtain a benefice, without the intention of remaining in the clerical state? See our moral work (7), where

it is stated that the recipient sins, but probably only venially. It is worth noting here what is stipulated in the agreement of 1741 between the Holy See and Charles III, King of the Kingdoms of Naples and Sicily, regarding the promotion of candidates to the ecclesiastical state. I. From this hour forward, no one shall be promoted to the first tonsure unless it is for the title of a benefice, or a perpetual chaplaincy, the revenues of which, after deducting expenses, amount to at least half of the tax established for sacred property in the diocese of the candidate. II. If a bishop deems someone truly useful or necessary to the Church, he may confer the first tonsure upon a young man, even if he does not have a true benefice, but only if he has a perpetual ecclesiastical pension, the revenue of which amounts to at least half of the tax established for sacred property in his diocese, or the entire property; which, in order to avoid any fraud or deception, shall henceforth be established only on stable assets, or on fixed annual revenues; and it must (1) Book 6, number 825. — (2) Number 826. — (3) Number 827. — (4) Ibid. — (5) Ibid. — (6) See book 4, chapter 112, section 1.

[*Latin ed. p. 775*]

OF THE MINOR ORDERS. 763 Regular clergy are to receive, according to the synodal tax of each diocese, provided that they do not possess a patrimony of less than twenty-four ducats, nor more than forty. III. In addition to the requirement of a benefice, perpetual chaplaincy, or a perpetual ecclesiastical pension, or the entire patrimony, no one shall be admitted to the first tonsure who, after having completed ten years of age, has not resided for at least three years in some seminary or ecclesiastical college, and where this cannot be done, has not at least worn the clerical habit for three years with the permission of his own ordinary, and during the entire three years, or at least for the majority of the prescribed feasts of each of the three years, has served in some church in the manner prescribed by his own bishop; this service being counted towards the time he would have spent in some seminary or ecclesiastical college, etc. Finally, it is stated: Whoever is promoted to the first tonsure, to the minor orders, or to the sacred orders contrary to the form prescribed in this regulation, in addition to the penalties mentioned above, shall be perpetually suspended from the exercise of the order already conferred upon him. And whoever has thus ordained him, or has also granted him the necessary dispensations for this purpose, if he is a bishop, shall be suspended for one year from the conferral of orders and from the exercise of the pontificals; and if he is not a bishop, but a lower prelate with the use of pontificals, he shall be suspended forever from the exercise of the same; and if he does not have the use of them, as well as any other person constituted in dignity, he shall be suspended forever from the exercise of his office and his orders. ARTICLE II. Of the minor orders. 52. How many are the minor orders? — 53. Section I. Of the doorkeeper. The matter must be given by the one

who ordains; and the Mass must be celebrated by him. — 54. Section II. Of the lector. — 55. Section III. Of the exorcist. — 56. Section IV. Of the acolyte. 52. — There are four minor orders: doorkeeper, lector, exorcist, and acolyte. They are called minor orders because of the lesser offices that are exercised by those who are ordained in connection with the Mass, or in the church. Section I. Of the doorkeeper. 53. — The doorkeeper is the order by which the power is conferred to open, close, and guard the church. The office of the doorkeeper (besides those mentioned) is also to ring the bells, and to admit the worthy into the church, and to expel the unworthy, namely, the unbelievers, heretics, and excommunicated. The remote matter of the doorkeeper's order is the keys of the church; the proximate matter is the delivery of the keys. The form is the words of the one who ordains, and says: "Act as if you were about to give an account for these things which are opened with these keys." Thus, the authors say that the keys must be those of the church, and they cannot be substituted by others, and they must be touched by the one who is being ordained. Here, however, let us again note what was mentioned above in n. 29, namely, that in the sacrament of Orders, the matter must be entirely given by the one who ordains, otherwise the sacrament is administered invalidly, and the Mass must be celebrated by him (1). Section II. Of the lector. 54. — The lector is the order by which the power is conferred to read the Holy Scriptures in the church. The remote matter is the book of prophecies and epistles; the proximate matter is the delivery of that book. The form is the words: "Receive, and be a minister of the word of God" (1). Lib. 6. n. 744.

[*Latin ed. p. 776*]

764 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. Relator, etc. Therefore, the duty of the reader is to read the Holy Scriptures (understand this to be outside of the Mass, for within the Mass, the duty of the subdeacon is present); and also to instruct the catechumens. If, in place of the book of epistles or the lectionary, the Bible or the Breviary were presented, this would indeed be valid, and even permissible for ordination; otherwise, if another book were presented.

Section III. Concerning Exorcism. 55.—Exorcism is "the order by which power is given to expel demons" from the possessed, so that they may not be hindered from receiving Communion." The remote matter is the book of exorcisms; the proximate matter is the tradition. The formula is: "Receive and possess the power to lay hands upon the possessed, etc." However, for the exorcist to solemnly perform an exorcism, the granting of jurisdiction, or a .a license from the bishop, is also required. This is not required by common law, but by a particular precept of the bishops, who prohibit exorcism without their license (1). It is solemnly declared that each and every faithful person can privately command demons not to harm, nor to hinder the faithful from performing sacred actions (2).

Section IV. Concerning the Acolyte. 56.—The acolyte is "the order by which power is given to carry the cruets to" the altar, and to light the candles and lamps upon it. The remote matter is empty cruets; the proximate matter is their tradition. The formula is: "Receive the cruets, etc., and receive the censer, etc." Both matters are essential, but the cruets are more noble, because wine and water are more necessary for the Mass. These matters are partial, constituting one complete matter. The character is not imprinted on the candlestick, but on the tradition of the cruets, because in this, the power is more principally conferred (3).

ARTICLE III. CONCERNING THE HIGHER ORDERS.

Section I. Concerning the Subdiaconate. 57. What is the subdiaconate? Matter, form, and office. If without a stole, etc. — 58. Requirements. — 59. § I. Concerning the vow of chastity; and whether chastity is a vow? If anyone is ignorant, etc. If a minor, etc. He who is ordained out of fear, etc. — 60. § II. Concerning the canonical hours. Condemned propositions. — 61. Who are bound to the hours? I. Clerics in sacred orders, II. Religious who have .have made solemn vows; III. Beneficiaries. — 62. To whom must the fruits be restored? — 63. If they have other obligations. — 64. Are they excommunicated, etc.? And those who, without internal attention, etc. — 65. Within the first six months. He who omits without guilt. Is it one sin, etc.? — 66. He who does not perceive the fruits, etc. — 67. If the benefice is small. — 68. Whether he who misuses it, etc. A canon who does not chant. — 69. What small matter, etc.? Whether throwing away the breviary. In doubt whether something has been omitted. — 70. What is required for the canonical hours to be said properly? I. According to the prescription. If you change the office. — 71. If you continue with another. — 72. If you are told that you are mistaken. Concerning the litanies and the office for the dead. — 73. II. Vocal pronunciation. What in the choir? — 74. III. Complete pronunciation. IV. Continuous pronunciation. V. The order of the hours. VI. Time. — 75. Intention and attention. — 76. Causes excusing from recitation. — 77. 77 to 80. § III. Concerning censures in general. — 81 to 83. § IV. Concerning censures in particular, and I. Concerning excommunication. — 84. II. Concerning suspension. — 85. III. Concerning deposition, etc. — 86. IV. Concerning interdict. — 87. V. Concerning irregularity. — 88. Irregularities from fault. — 89. Irregularities from defect, etc.

57.—The subdiaconate "is the order by which power is conferred through which the ordained person can carry the chalice to the altar, minister to the deacon, and read" the epistle in the Mass." The remote matter is twofold, namely, an empty chalice with an empty paten, as well as the book of epistles. The proximate matter is the tradition of these. The chalice, however, should probably be consecrated, so that more may be able to—(r) Lib. 6. n. 745 et 805. — (2) See lib. 3. n. 195. app. de adjur. ad

IV. — (3) Lib. 6. n. 745.

[*Latin ed. p. 777*]

OF THE VOW OF CHASTITY.

Some hold the opinion that this is so; hence, their judgment should be followed in practice (1). Thus, it is also entirely necessary to transmit the tradition of the book of epistles (2). The formula used by the bishop is: "See whose ministry is entrusted to you, etc." and another: "Receive the book of epistles, and have the power to read them, etc." A partial form is used for both matters. The office of the subdeacon (beyond those mentioned at the altar) is to carry the cross and to wash the vessels. The subdeacon would sin if he ministered solemnly at Mass without a stole, unless necessity demanded it, as says Father Suarez (3). However, does a subdeacon gravely sin if he ministers at a funeral without a stole? See the statements above, no. 14. A cleric (or even a subdeacon) exercising the office of subdeacon without a stole or with a stole, but not intending to perform that act as part of his office, does not incur irregularity; because then, as Bonac. says, he is exercising only the office of a singer. Conversely, if he intended to exercise the proper office of a subdeacon with a stole (4). Note here the decree of the Sacred Congregation of Rites, issued on July 6, 1698: "If a subdeacon is lacking for a solemn Mass, if necessity arises, it may be permitted by superiors for someone constituted in a lower order to substitute, prepared to read the epistle without a stole." In Merati, in the index of decrees, no. 531. And note that this decree is subsequent to other contrary ones which Ferrar presents in Bibl. verb. Miss. sacr. art. 12, nos. 57 and 58.

To be promoted to the subdiaconate, it is required that: 1. he be ordained in the minor orders; 2. he have completed the age of 21 years; 3. he have a title of support (see above, nos. 37 to 39); 4. he know well what pertains to his office; 5. An examination is required, which should be more rigorous for subdeacons, as Homobonus rightly points out (a penitentiary in the church of Bologna), and especially concerning the obligations of the subdeacon, namely, to observe chastity, to recite the office, to have a title of support; also, subdeacons should be examined concerning censures and irregularities, of which we will briefly enumerate the principal elements here below.

§ I. Concerning the vow of chastity.

59. — By order of Saint Gregory the Pope, in chapter 2, dist. 28, the subdeacon is bound to make a vow of chastity. Hence, the obligation of chastity for those who are ordained in the sacred orders is more truly based on the force of the vow attached to the orders than on the precept of the Church, as can be sufficiently gathered from chapter Cum olim, de cler. conjug. However, if someone, when receiving the order, did not expressly wish to vow chastity, then that person would at least be bound by the

precept of the Church to observe chastity. And this must be said even if he did not know this obligation, provided he truly wished to receive the order; and even if he did not know it culpably, as many doctors teach (5). But he who is ordained before the use of reason is not bound to chastity. But what of he who is ordained before puberty? There are two opinions on this, both probable (6). He who is ordained through unjust fear instilled from without, and who does not have the intention of receiving the order, is not bound to chastity; and even if he had that intention, it is more probable that he would not be bound, because a vow made out of fear is probably invalid. Conversely, if the fear was justly instilled; or if the one ordained knowingly ratified his ordination, namely, if he voluntarily exercised the order (7).

§ II. Concerning the canonical hours.

60. — First of all, it is necessary here to note several condemned propositions (1) Lib. 6, no. 747. — (2) No. 746. — (3) Suarez de censur. Disp. 4s, sect. 4, no. 17. — (4) See lib. 7, no. 358. — (5) See lib. 6, no. 809, doubts 1 and 2. — (6) No. 810. — (7) No. 811.

[*Latin ed. p. 778*]

766 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. From Alexander VII, namely, proposition 20, which stated: "The fruits [of a benefice] are not due before a judgment." Proposition 21: "He who holds a benefice, if he devotes himself to the study of literature, fulfills his obligation by reciting [the Divine Office] through another." Proposition 33: "The restitution of fruits is made up by alms given beforehand." Proposition 34: "He fulfills his obligation by saying the Paschal Office for the Office of the Feast of Palms." Proposition 35: "With one Office, one can fulfill the obligation of two days." Also, Innocent XI condemned proposition 54: "He who cannot recite Matins is not obliged to recite at other hours."

61. — It is inquired: Who are obliged to recite the Hours? The following are obliged: 1. All who are ordained in the sacred orders, even if they are excommunicated, suspended, or degraded. He who is ordained to the subdiaconate is obliged, on the day of his ordination, to recite the Hour corresponding to the hour of his ordination. 2. Religious of both sexes who have made solemn vows. This is derived from ancient custom, which imposes a grave obligation, as the common opinion holds against some. It cannot be said that it is not certain whether the custom of reciting the Office was introduced by religious to impose a grave obligation upon themselves; for it is answered that since this custom has been constantly and for a long time observed by all religious with great diligence, it is a presumption in favor of the affirmative. For, as the general rule is, "that which is presumed to exist, is presumed to exist," so it is with the possession of this obligation. However, no religious or nun is, in particular, obliged to recite the Hours in choir, as commonly stated by Suarez, Salm, the Council, etc.; provided

that the choir is not abolished, for which at least four servers are required. To the Office, however, religious who have been expelled are not obliged; but exiles are. 3. Beneficiaries; otherwise, they must restore all the fruits of the benefice, according to the Lateran Council, 5th section, 9th paragraph, where it is stated: "We decree that whoever holds a benefice, if, within six months after obtaining the benefice, he does not recite the Divine Office, he shall not receive his fruits in proportion to his recitation." And if such a person persists in omitting it even after a warning, he may also be deprived of the benefice. Then, Saint Pius V, in the constitution 186, which begins "Ex proximo Lateranensi," decreed that he who omits Matins must restore half of the fruits corresponding to that day; he who omits the other Hours, the other half; and he who omits only one of the smaller Hours, one-sixth. And the same is to be said if anyone, through several or minor omissions, reaches a grave matter within the Office of the day. But he who would today make up for the Office omitted yesterday is not thereby released from restitution. These fruits are due before any judgment, because the recitation of the Office is absolutely necessary for receiving the fruits, since, without it, the beneficiary cannot receive his fruits, as the aforementioned Council has decreed.

62. — The restitution must then be made either to the poor (any place will suffice), or to the fabric of the church, or to the house of the benefice, or for the increase of the fields themselves. It can also be made for the restoration of another needy church, if its own does not require it, or if the fabric of another church would benefit the poor. It can also be applied to Masses for the dead; and the beneficiary can still apply it to himself, if he is truly poor, provided he does not do so fraudulently, as stated by Suarez, Castrop, Navar, Tol, Less, etc. If someone, after omitting the Office, gives alms, unknowingly or perhaps ignorant of the obligation of restitution, it is probable that he can count them, as stated by Sanch, Suarez, Lug, Laym, Salm, Croix.

(1) See book 4, number 142.

(2) Number 143.

(3) Number 142, doubts r and 2.

(4) See book 5, number 665.

(5) Number 668.

(6) Number 667.

(7) Number 665, and book 4, number 145, see "Sed dices."

(8) Book 3, number 672.

(9) Number 700, question 11, version "Limitantes."

[*Latin ed. p. 779*]

OF THE CANONICAL HOURS.

767 63. — It is probable that Sotus, Lessius, Vasquez, Bonaventure, Sanchez, Salm, and others say that if a beneficiary has other obligations which he has already fulfilled, he is not bound to restore all the fruits. However, it should be said differently (whatever others may say) concerning a simple beneficiary who has no other obligation except to recite the canonical hours (1).

64. — But is an excommunicated person, tolerated, bound to restore the fruits of his benefice before judgment, if he has fulfilled the obligations of the benefice? Some affirm this, but it is more probable and common for others to deny it, as is also stated in tr. 19, n. 19, at the end, because the guilty party is not bound to undergo that penalty which requires an action, except after judgment; on the other hand, tolerated excommunicates validly administer the sacraments and recite the canonical hours; thus, Layman, Tournhem, Castrop, Salm, Bonaventure, Concinius, and many others (2). Therefore, it is also probable that one is not bound to make restitution who recites without internal attention; because the opinion that external intention and attention are sufficient for fulfilling the obligation is not improbable, according to what is said in n. 75 (3).

65. — Furthermore, it should be noted that St. Pius declared in the aforementioned constitution that beneficiaries, if they neglect their office within the first six months, although they are not bound to restore the fruits, are nevertheless not excused from mortal sin (4). Therefore, it must be said that beneficiaries, even if they wished to restore the fruits at that time, gravely sin by neglecting their office, since the Church has bound them to the office at any time for the sake of religion (5). Therefore, he gravely sins who neglects his office within six months (as stated), but is not bound to make restitution, as Lessius, Vasquez, Concinius, Vivès, and the common opinion teach (against a few). The reason is that, according to the common opinion, restitution of the fruits is not yet due by natural law; for the fruits are not given as payment for the recitation, but for the support of the beneficiary, with the obligation of the office imposed by the Church for the sake of religion (as we have said); and therefore, no restitution was prescribed before the Lateran Council. The Council, however, prescribes restitution only for those who neglect their office after six months (6). For the same reason, he is not bound to make restitution who neglects the recitation of the office without fault; because, as stated (n. 61, at the end), restitution must be made before any judgment; but since it is a penalty for a precept, it certainly requires fault, as Lessius, Sanchez, Concinius, Vivès, and others commonly say (against a few) (7). For the same reason, a subdeacon who holds a benefice commits only one sin if he neglects his office, since he is bound to it for the sake of religion (8).

66. — It is doubted: 1. Whether a beneficiary who does not receive the fruits is bound to the office? He is not bound, if he has not negligently acted

in obtaining them. Unless, however, he has been justly deprived of the fruits as a penalty for some crime; or unless he has a certain hope of receiving them in the following years (9). What if there is a lawsuit concerning the benefice? Answer: If the beneficiary has not yet received possession of it, he is not bound to the office, unless it is clear that he will immediately acquire possession. But if he has already received it, he is bound, in the case where he has a certain hope of winning the lawsuit; otherwise, if it is doubtful (10).

67. — It is doubted 2. Whether one holding a temporary benefice is bound to the office?

(1) Lib. 3, n. 673.

(2) N. 670.

(3) N. 669, and Lib. 4, n. 176.

(4) See Lib. 3, n. 663 and 666.

(5) Lib. 4, n. 145, Question II.

(6) Lib. 3, n. 665 and 646.

(7) Cited n. 665.

(8) Lib. 4, n. 145, Question I.

(9) Lib. 3, n. 664.

(10) Cited n. 664, v. Quid si.

[*Latin ed. p. 780*]

768 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. Some affirm; but others, including Lessius, Sanchez, Malder, Arrag, Rodriguez, Molfes, Pellizari, and others, deny that a small benefice, according to chapter 15, "Concerning Benefices," section 6, is considered a true benefice. They state that a small benefice is one that does not provide more than one-third of the sustenance (1). 68. — It is questioned whether a beneficiary who mismanages the fruits of the benefice is obligated to make restitution? Many grave doctors, including St. Antoninus, Lessius, Cabas, Sanchez, Salm, and others, with St. Thomas (2), who held that benefices are considered patrimonial property, probably deny this. However, others, including Layman, Lion, Navar, Peter of Conc, and others, more probably affirm that beneficiaries are obligated by justice to provide the superfluous fruits of their benefices to the poor or to pious works; for at least the Church does not grant them dominion over the fruits, except in a limited way, for the purpose of providing for the poor. (3). See the statements in part 10, paragraph 7. It should be diligently noted that Pope Benedict XIV, in a brief addressed to Cardinal Delphini, Patriarch of Aquileia, issued on January 19, 1748, declared that canons who do not participate in the choir, or who do not sing there, lose not only their daily distributions, but are also obligated to make restitution of the fruits of their benefices (4). 69. — It is asked: what is the extent of the obligation of office? It is certainly a grave sin to omit a

notable part of the office. However, a small amount of omission, such as a few minutes, is considered less than a small hour (5). But those who omit all seven hours are, according to Lessius, Sanchez, Conc, Tournely, and the common opinion, guilty of one sin, because all the hours constitute the complete office (6). He who would cast the office into the sea would commit as many sins as there are days of omission; and each omission of the office, pertaining to a particular day, is a separate transgression, and by foreseeing these, he would sin in the cause (7). Whether, in a doubt as to whether something from the office has been said or omitted, it should be repeated? It should be repeated in a negative doubt, that is, if you have no prudent reason to believe that it has been said; otherwise, if the doubt is positive, namely, if you reasonably believe that you have said it; thus, generally, Navar, Sanchez, Lugo, Tournely, Castrop, Salmantic, Roncagl (8). 70. — It is asked: what is required for the hours to be recited properly? It is required that they be recited according to the prescriptions of the Roman Breviary. Therefore, I consider the opinion of those who say that one does not commit a mortal sin by significantly shortening the office to be improbable (9). But whether changing to an equal length, or something nearly equal, is mortal. Here, the opinion of many is divided. However, it seems reasonable, with Spor, Ronc, Viv, Laym, Elbel, and others, to say that it is mortal if the change is frequent, venial if it is rare, such as three or four times a year, and not sinful at all if it is done occasionally for a reason, such as travel or study. The reason is that, although the office is to be recited according to the individual form of the Breviary, as St. Pius V prescribes in the bull "A nobis," described in the Breviary, saying: "No one shall be absolved unless by this alone form;" yet it is probable that the Pontiff, in prescribing this form, considered more the substantial form, which is the quantity of the office, than the accidental form, namely, its quality; and therefore, the change does not seem to exceed a venial sin. However, to do this frequently would be (1) Book 3, paragraph 674. — (2) 2-2, question 285, article 7. — (3) Book 3, paragraph 492. — (4) N. 675. Doubt 3. — (5) Book 4, paragraph 147. — (6) N. 148, see here. — (7) N. 149. — (8) N. 150. — (9) N. 160 and 161, see Question 3.

[*Latin ed. p. 781*]

OF THE HOURS. 769, a mortal sin, because (as Laym rightly says), it would be a perversion of order; and indeed a grave sin if it were frequent (1). 71. – Having laid these things down, it is probable that 1. if you continue with another office, you can recite the office of that place, unless you are a religious; because then you must recite the office of your own order; thus Laym, Holzm, Bonac, Castrop, and others. 2. That chaplains and those who serve at the tables of cardinals and bishops can conform to them in the office; Holzm, with the common and decree of the Sacred Congregation of Rites, and Clement, *Dignum, de Cel. Miss.* And the same

is said by doctors concerning the chaplains of nuns, as Croix, Holzm, Gob, Stoz, etc., and of those who perform spiritual exercises among religious, Laym, and Gobat. 3. That you can recite the office of a companion; because the very association excuses this, provided that the office is not notably shorter; Viv, Ronc, Henriq, Quintanad, and others (2). 72. – If someone notices that he has erred, after having made considerable progress in an improper office, he can either continue or recite the remainder of his own; but it will be better to recite his own, unless he wishes to omit the office of that saint on another day, which several doctors admit as probable (3). However, by custom, there is a grave obligation to recite the litanies of Saint Mark and the Rogationes, and the office for the dead, even in private (4). 73. – It is required 2. that the words be pronounced aloud. Here, it is doubted whether the one reciting should hear himself? Some affirm; others, however, do not improbably deny, as the most learned Sylv. Tourn, Laym, Azor, Spor, Salmant, Trull, Rodr, and others; because in the recitation of the office, hearing is not commanded, but pronunciation, to which it is not necessary to raise the voice, but it is sufficient to form some external sound, which always accompanies the utterance of words (5). One who recites in the choir, submitting himself, sufficiently fulfills the requirement (6); but not a canon, who is bound to sing, according to what is said in n. 68 at the end. However, one who recites in the choir suffices if he hears the other part in a confused manner, or only one part of it. What if you do not sufficiently perceive the other part, due to the fault of the choir or the companion? Some say that one should repeat what was not heard. Others deny it, because by the very association, and by your moral application, you already communicate; thus, not improbably, Sa. Major, Ronc, Elbel, Salm, Pelliz, Trull, and others (7). A deaf person does not fulfill the requirement, whatever others may say; but this is not the case with a hard-of-hearing person, if he hears at least in a confused manner (8). 74. – 3. Pronunciation must be complete, that is, without alteration, by which the meaning of the words is notably changed. However, the office is valid if at least the signification of the words is preserved (9). 4. Pronunciation must be continuous, that is, without interruption in any hour, but an interruption induces a venial sin, unless some cause excuses it (10). However, Matins can be separated from Lauds even without a cause, and so also the three nocturns, at least for three hours (11). However, if an interruption has been made, it is more probable that one is not bound to repeat the hour, since each verse of the Psalms has its own meaning (12). 5. The order of the hours: that is, it should not be inverted. However, the inversion is only venial, even if it is frequent; and also in the choir, as is probably said by Caj, Gav, Laym, Sanch, Bon, etc. (13). However, to celebrate Mass before Matins is probably and commonly not a mortal sin, as held by Less, Castrop, Conc, Tourn, Sot, Tolet, Bellarm, Croix, Salm, and many others (14). 6. A fixed time. The time for Matins begins from the hour of Ves- (1) Lib. 4, n.

161, v. Secunda, and so on. — (2) Ibid., vers. Juxta autem. — (3) N. 161, Quær. V. — (4) N. 160, Quær. I. and II. — (5) N. 165. — (6) Ibid., vers. An autem. — (7) Ibid., Quær. II. — (8) Ibid., Quær. III. — (9) N. 165. — (10) N. 166. — (11) N. 167. — (12) N. 168. — (13) N. 169 and 169q. — (14) See l. 6, n. 347, v. Quær. 49.

[*Latin ed. p. 782*]

770 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION.

(1) It is probable that this also applies to the Office of the Dead, except for the part sung in the choir.

(2) And there is also a decree from the Sacred Congregation of Rites, found in P. Ferraris, Bibliotheca, vol. 4, under the word "Litaniae," page 594, number 17.

(3) This does not apply to the Litanies.

(4) Whether it suffices to recite Matins at the second hour after midday is questioned. Some affirm, as Salm, with Sanchez, Trull, etc., that this is permitted today by custom. But it is more correct to deny this, as Holz, Croix, and the Council state, because at that time, the hour of Vespers has not yet begun, which is the midpoint between midday and sunset; indeed, the ecclesiastical day does not begin until the hour of Vespers. However, if custom has introduced the recitation of Matins at the second hour after midday by a large part of the faithful, as stated in chapter 2, number 79, regarding custom, this would need to be proven; but as yet, it has not been proven, and therefore the contrary law holds.

(5) The time of the hours begins from midnight to midday; Vespers and Compline from midday to midnight.

75.—7. Intention and attention. An intention (namely, to recite) is required, at least virtually; it suffices if, from the beginning, one takes the Breviary in order to recite. However, it is commonly and more probably held, as by Suarez, Castrop, Lessius, Tournel, Pontas, Vasquez, and Croix, with others, that an intention to fulfill the obligation is not required; indeed, the one who recites fulfills the obligation, even if he does not intend to fulfill it, because he fulfills it, and he cannot fail to fulfill it, since fulfillment does not depend on his will, but on the will of the law, or of the Church.

Furthermore, external attention is required, namely, that no action incompatible with internal attention be performed. But is internal attention also required? Some affirm that internal attention is required, which is directed either to God, or to the meaning, or at least to the words, namely, that they be pronounced correctly; otherwise, as they say, it would not be prayer. Others, however, hold that true prayer is that which is made with the intention of praying and external attention; thus Lugo, Paludanus, Con-

inchamp, Angelus, Sylvaticus, Croix, and many others, with St. Antoninus and St. Thomas.

Reason 1: because if internal attention were essential to prayer, a minister administering Extreme Unction without internal attention would administer it invalidly, since the form of this sacrament is a supplication: "May God have mercy on you," etc., from the words of St. James: "Pray over him, anointing him with the oil of salvation..." (Ephesians 5:14). But this cannot be said, since it is clear from Florence that for the validity of the sacrament, only three things are required and sufficient: the matter, the form or words pronounced by the minister, and the intention of the minister to do what the Church does.

Reason 2: because if internal attention were essential to prayer, even those who, with involuntary distraction, complete the Hours would not fulfill their obligation. For these reasons, which are not to be disregarded, the second opinion seems not to be improbable.

Furthermore, all agree that, in order to say that someone did not fulfill [their obligation], it must be the case that not only did they notice a distraction, but they also fully realized that they were distracted from the office; otherwise, even if they voluntarily distracted themselves, they did not voluntarily distract themselves from the recitation. However, a scrupulous person, because of distractions, is never obligated to repeat [what was recited].

76.—Question IV: What are the causes that excuse one from the recitation of the Office?

The following excuse one:

1. A serious infirmity, or a grave inconvenience. One who is suffering from tertian or quartan fever is obligated to recite, and even to anticipate [the Hours], if it is convenient.

[*Latin ed. p. 783*]

OF CENSURES IN GENERAL. 771. It is possible. However, one is not obliged to anticipate Matins the day before; for no one is bound to use his privilege. If one can conveniently do so, he is obliged to recite the Office with a companion. If one is seriously inconvenienced by reciting, he is not obliged; unless, that is, he is excused, except if he has a probable reason. But it is better in that case to refer the matter to a physician, or a superior, or at least a prudent man. But when illness is pressing, if one cannot recite the entire Office, nor is he obliged to recite a portion, because otherwise great scrupulous anxiety remains as to whether he can continue, or whether he can recite the rest; this is very probable. See Suarez, Navarrus, Sanchez, Lugat, Cardenal, Roncaglia, etc. (1). 2. A just impediment, such as if one is occupied in a work of charity which he cannot omit without causing scandal, or without notable detriment to himself or to others; for example,

if he cannot postpone a sermon, or the hearing of confessions in a large gathering (2). 3. Blindness (3). 4. Lack of the Breviary. One is obliged to recite what one remembers, provided that what one remembers amounts to at least a small hour. And if one lacks the Office proper, one is obliged to recite from the common Office. Also, if one can conveniently have a companion, one is obliged to do so. As for whether a beneficiary is also obliged to bring a companion to recite the hours, if he cannot do so alone, there are two probable opinions, but the more common and safer opinion is affirmative; indeed, it should be followed entirely, if he wishes to receive the fruits; for with only the probability of the contrary opinion, one cannot begin to possess the fruits, as rightly say Lessius, Soto, Salmeron, Concinius, Tournhem, Bonnius, and others commonly (4) according to what is said in tr. 10, n. 8. — 5. A dispensation from the Pope; and also from one's own bishop (for a limited time), if there is a reason; for example, if he doubts about moral impotence (5). § III. Of censures in general. (In this paragraph are placed only definitions, divisions, and principles, leaving aside questions and other information, which are found in tr. 19, where we have fully discussed censures.) 77. — It is asked: I. What and how many are censures? "A censure is a spiritual and medicinal penalty, by which, through the ecclesiastical authority, something is taken away from the delinquent and contumacious person, namely, the use of certain spiritual goods." 78. — A censure is divided 1. into excommunication, suspension, and interdict. 2. Into that which is *de jure*, namely, that which is imposed by general and permanent law, and that which is *de homine*, namely, that which is imposed by a prelate through a particular sentence. 3. Into that which is said to be of *latæ sententiæ*, which is incurred by the very fact; and that which is *ferendæ sententiæ*, which is not incurred until after the sentence, as are the censures of *latæ sententiæ* with verbs in the future tense: see in the cited text, tr. 19, n. 2. 79. — It is asked: II. Who can impose censures? All ecclesiastical superiors having jurisdiction in the external forum or ordinary jurisdiction can do so, such as the Pope, councils, bishops, and their vicars, also capitular vicars, and the chapters of religious orders and their superiors; or by delegation, such as those to whom the faculty is committed by one having ordinary jurisdiction; see tr. 19, n. 3. It is asked: III. What is required in order that anyone may be subject to censures? It is required 1. that he be a man; 2. that he be baptized; 3. that he be of sound mind; 4. that he be a determinate person; 5. that he be subject. As for foreigners, (1) Book 4, n. 154 and 155. — (2) Ibid. n. 156. — (3) N. 157. — (4) Ibid. and 158. and see book 3, n. 761. Question II. — (5) Book 4, n. 159.

[*Latin ed. p. 784*]

APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. See treatise 19, no. 6.

IV. What is required to incur a grave censure, such as excommunication

major or suspension, either total or for a prolonged period?

It is required that:

1. There be a grave sin, and that the matter itself be either grave, or at least conduce strongly to the intended end; but in doubt, the preceding precept certainly binds.

2. There be an external act.

3. The act be consummated.

4. There be contumacy, so that the deliquent knows that the crime is not only forbidden by divine law, but also by ecclesiastical law. See the implications derived from these, cited in treatise 19, no. 7.

V. Who can absolve from censures?

Only he who imposed a censure issued by a particular sentence of the ordinary, or his superior, or successor, or delegate, can absolve from that censure. But any confessor can absolve from those censures which are imposed by law, or by a general sentence (unless reserved), see ibid. no. 11.

80.—It should be noted that:

1. Bishops, according to chapter 6, "Liceat," session 24, in the Council of Trent, can grant dispensations in all irregularities and suspensions arising from hidden faults, except those arising from voluntary homicide, and those which are brought before a contentious forum. Furthermore, they can absolve from any hidden faults, even those reserved to the Apostolic See, any persons subject to them in their diocese, either by themselves, or by a vicariate specially appointed for that purpose. See treatise 20, no. 29 and following.

2. This faculty can also be generally delegated by the bishop to others, ibid. no. 34.

3. It should be noted that the aforementioned faculty is truly removed from bishops with respect to heresy, and other reserved cases, in the Bulla Cœnæ; ibid. no. 38. However, if someone is prevented from going to Rome, he can be absolved by the bishop: absolutely, if the impediment is perpetual; but under oath to go to Rome, if it is temporary, except always for women and children, see ibid. no. 40 to 45.

Furthermore, it should be noted here:

4. The papal excommunication for those who violate ecclesiastical immunity, from which Clement VIII also deprived regular canons, as we said in treatise 20, no. 99, is incurred only by those who violently and unjustly drive away from the Church those who flee to it; for Clement in his decree did not forbid regular canons to absolve from any excommunication with respect to those who violate immunity, except for that which was declared by Gregory XIV, who in bulla 7, declared that those who violate immunity, by extracting someone fleeing to the Church, incur the same papal excommunication which was previously pronounced against those who

violate ecclesiastical liberty by Paul II, in extrav. Etsi dominici, de Pœnit. et Rem. et by Sixtus IV in another extrav. Etsi dominici, ibid. The aforementioned pontiffs reserved this excommunication in such a way that it was not included in the general concession to absolve from pontifical censures. Nor does the text in chapter "Cum pro tua," of the Decretals, contradict this, where, when someone in the cloister of a certain monastery struck a cleric, it is said in the text that he incurred a double excommunication, one because he struck the cleric, the other because he violated immunity. For, as the doctors commonly note, with Fagnan in the cited chapter, no. 10, that excommunication for the violation of immunity was not imposed by law, but by the bishop himself, so the Abbot, Cardinal Ancharan, with Innocent, when he said "Duplicem," noted: "Duplicem, that is, because of the imposition of hands by law, and the violation of the cloister, imposed by the bishop himself." Hence, Fagnan, and others, in the chapter, among other things, on Ecclesiastical Immunity, no. 102, are certain that there is no...

[*Latin ed. p. 785*]

OF SPECIFIC PENALTIES. 773. The Pope reserves excommunication by sentence against those who strike or steal in the church. § IV. Of specific penalties. And I. Of excommunication. 81. — Excommunication is "a penalty by which a man is deprived of communion with the Church." It is twofold: minor, which deprives only of the passive use, or the reception of the sacraments; see treatise 19, nos. 26 and 27. And major, which deprives also of the active use and all communion, as we shall say shortly in no. 83. 82. A person may be excommunicated either tolerably or to be avoided. Tolerably is he whom the faithful are not bound to avoid, according to the constitution. To be avoided, according to the Council of Coutances, nor even in divine matters, as the doctors more probably say; see the cited treatise, no. 25. And the same is said of those who are tolerated in suspension and interdict. To be avoided is he whom the faithful are bound to avoid. And a person may be avoided in two ways: either because he is specifically excommunicated and denounced, or because he is a public persecutor of a cleric or a monk, provided, however, that the act cannot be concealed by any tergiversation, nor excused by any pretext, as is said in canon 17, question 4, see the cited treatise, no. 16. But this excommunication, if the persecution is enormous, or grave and public, is only absolved by the Pope, unless the persecutor is a woman or a minor; for these can be absolved by the bishop, who can also absolve from a lesser persecution, up to no. 48. 83. — Therefore, a person who is excommunicated by major excommunication (even if he is tolerated) is deprived of: 1. the suffrages of the Church; 2. benefits, so that the granting of a benefit to him is altogether null; 3. the reception and administration of the sacraments and all the use of divine offices; 4. all spiritual and civil communion with the faithful. On the other

hand, the faithful sin if they communicate with a person to be avoided, either in divine matters, namely, if they attend Mass with him, recite the office; or in civil matters, namely, if they provide for him, live with him, enter into partnership with him, greet him, write to him, all of which are included in that verse: "To pray, to greet, to help, to communicate, to eat together is denied." But those who communicate in these three cases sin gravely: 1. if they communicate in divine matters; 2. if in contempt of the Church; 3. if in a criminal offense, that is, if they communicate in the same offense (for example, concubinage), for which he is excommunicated, and in this third case they also incur major excommunication, while in the others (speaking regularly) they sin only venially, and are bound only by minor excommunication; from which guilt and excommunication necessity, utility, the law of marriage, subjection, and ignorance excuse, which are contained in another verse: "Useful, law, humble, unknown thing, necessity." See these, treatise 19, in its entirety, point 2. I have said speaking regularly, for although it is probable that any civil communication with a person to be avoided is only venial, it is more probable that it is mortal, if it is frequent, with the intention of frequently communicating with him; see ibid., no. 22. II. Of suspension. 84. — "Suspension is a penalty by which a cleric is prohibited from exercising certain ecclesiastical functions." Suspension is, however, divided in many ways:

[*Latin ed. p. 786*]

774 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. 1. Some offenses are against the law, others against human respect; 2. Some offenses pertain to a specific time, after which they expire; others are absolute, and remain until removed by absolution; 3. Some offenses arise from office, namely, from the order or jurisdiction; others from benefits, and still others from both, from office and from benefits: see the questions on this subject, book 19, from number 64 to 67. III. Concerning Deposition. 85.— "Deposition is that which simply deprives one of all use of offices and benefices." Deposition, however, is either real, which is also called degradation; or verbal, which is absolutely called deposition. The former is imposed with solemnity, and deprives one of both the privileges of the forum and of canon law, without hope of restitution. The latter, on the other hand, is imposed without solemnity, and leaves both privileges intact: see book 19, number 67. IV. Concerning Interdict. 86.— "An interdict is an ecclesiastical censure which prohibits the use of both divine offices and certain sacraments, and also the use of ecclesiastical burial, insofar as that is the case." It is said "insofar as that is the case," because excommunication also deprives one of the same use, but insofar as it is a communion with the faithful; suspension, however, does not properly impede the use, but the exercise of ecclesiastical power. An interdict may be local, which immediately affects a place; or personal, which immediately affects individuals. It may

also be mixed, which immediately affects both a place and its inhabitants. See also book 19, number 68. There is also a cessation from divine services, which is defined as: "A prohibition made to clerics, that they abstain from divine offices and from ecclesiastical burial." This is not a censure, nor is it imposed as a medicine, but only as a sign of sorrow, for some very grave offense against God or the Church. It can be imposed by those who can impose censures. V. Concerning Irregularity. 87.— "Irregularity is a canonical impediment to the reception of holy orders, and to the use of those who have received them." It is called an impediment, not a censure; because this is the more common and probable opinion: see book 19, number 73. Note here 1. that irregularity is not incurred unless it is expressly stated in the law, from chapter 1, title 1, of the Decretals. Therefore, in doubt, it is not incurred unless it concerns a homicide; for in doubt as to whether someone has committed it or not, they are considered irregular, ibid., numbers 79 and 80. Note 2. that to incur irregularity from a fault, at least knowledge of the ecclesiastical law prohibiting it is required. As for whether knowledge of the penalty is also required? Probably, Navarrus, Sylvestrus, Sanchez, Castrén, Roncaglia, etc., affirm this. See ibid., numbers 83 and 84. Irregularity is removed 1. by the cessation of the cause, if it is due to a defect of age, ignorance, or poverty, or infamy, which is also removed by a change of place, or by amendment; otherwise, if it is of the law, that is, by sentence, a dispensation is required. 2. By Baptism (if it is from a fault); 3. by dispensation; 4. by religious profession: see ibid., numbers 85 to 87. 88.— Irregularity is either from a fault, or from a defect. There are six irregularities from a fault. I. From the serious and deliberate repetition of Baptism, and in this case, both the baptizer and the baptized become irregular: see book 19, number 88. II. From the violation of a censure, namely, if someone knowingly exercises an office while subject to it.

[*Latin ed. p. 787*]

OF CANONICAL IMPEDIMENTS. 775, also in the solemn order, no. 89. III. Due to a sin by which a cleric, knowingly and deliberately, exercises the sacred order which he does not possess, no. 90. IV. Due to certain clandestine receptions of orders, that is to say, 1. if someone receives an order without the approval of the bishop, according to chapter 1 concerning him who clandestinely receives orders, etc. 2. If, without such dispensation, he receives several orders on the same day, one of which is the priesthood, according to chapters 2 and 3 of the same title, 3. He who, after a marriage has been contracted but before consummation, receives the sacred order, with the wife's objection, and according to *extravagantes* of the Council of Trent, on Vows; see cited treatise, 19, no. 91. We have said "due to certain" because other clandestine receptions of orders (enumerated in this Appendix, no. 46) incur only suspension (which the Pope reserves, if it is public), but not irregularity. And it is probably also to be said that he who,

under the influence of a canonical impediment, receives the sacred order, is not irregular, unless he himself exercises the order in question, according to what is said here, no. 91. V. Due to enormous crimes, if they are public; and notorious, by fact or by law, and which carry with them an attached infamy, such as adultery, incest, sodomy, perjury in court, heresy, simony, robbery, pimping, usury, abduction of women, and the like. However, this irregularity, if it arises from a fact, is removed by amendment; if it arises from the law, by dispensation; see treatise, 19, no. 92. VI. Due to unjust mutilation; and all the more so due to voluntary homicide, according to chapter, if someone, 1. concerning homicide, and according to the decree *unicola*, of the same title. And this irregularity extends also to those who command, advise, or otherwise concur, according to chapter, if someone is a widow, Dist. 50. See other things on this point, treatise, 19, no. 94 and following. 89. — There are eight irregularities arising from defects. I. Arising from a defect of the soul, from which are irregular: 1. the insane, the frenetic, and the epileptic. 2. The uneducated, according to what is said here, no. 35. — 3. Neophytes, or those recently converted. II. Arising from a defect of the body, namely, if someone has a defect which either prevents the proper exercise of the order, or brings about a noticeable indecency. From the first head, the blind, the deaf, the mute, those lacking a hand, or all the fingers, or the thumb, or the index finger, are irregular. From the second head, the lepers, those lacking a nose, and those otherwise monstrous, such as those having a very large hump, are irregular; see treatise, 19, no. 116 to 125. III. Arising from a defect of legitimacy, from which all illegitimate children are irregular; who, however, are legitimized, either by subsequent marriage, or by religious profession, or by dispensation from the Pope; see ibid., no. 126 to 129. IV. Arising from a defect of age, concerning which see what is said here, no. 43 and 44. V. Arising from a defect of the sacrament, namely, from bigamy: it is called a defect of the sacrament, because he who has two wives cannot properly signify the union of Christ with the Church, which was his unique bride. Bigamy, however, is threefold, which prevents the reception of orders, namely, 1. true bigamy, when someone has validly contracted marriage with two people successively. 2. Interpretative bigamy, when someone is legally considered to have had two wives by mere fiction of law, concerning which see cited treatise, 19, no. 132 and following. 3. Similar bigamy, which arises from an attempt at marriage (although invalid) with a prostitute, or with a virgin, after a solemn vow has been made in religion, or after the reception of the sacred order; see ibid., no. 138. VI. Arising from a defect of infamy; concerning which see what is said here, no. 88, to V; for the irregularities arising from defect and from a crime coincide in the same way regarding infamy. VII. Arising from a defect of liberty: from which are irregular: 1. all properly called slaves; 2. married people; 3. those bound to a curia by oath or by salary; 4. soldiers, at least as long as

they are bound by an oath: see treatise, 19, no. 140 to 144.

[*Latin ed. p. 788*]

776 APPENDIX III. EXAMINATION OF CANDIDATES FOR HOLY ORDERS. VIII. Regarding defects, specifically the licit mutilation of a member, whether by incision or cauterization performed by a surgeon, or licit homicide in a just offensive war, or in a judicial proceeding through active, effective, and proximate cooperation intended for the killing; see ibid. nos. 144 to 147. Section II. Concerning the Diaconate. 90. What is the diaconate? And what are its matter and form? — 91. The duties of a deacon. Censorship, etc. Concerning the penance imposed by the bishop, whether it must be fulfilled under pain of a serious penalty. 90. — The diaconate is "an order by which power is conferred to assist immediately" the priest in the Mass, by offering him the paten with the host and the chalice with wine; also to read the Gospel and to preach." The opinion that is more probable to us (according to what is said here, no. 28) holds that the sole matter of the diaconate is the imposition of the bishop's hands, and the sole form is the words of the bishop: "Receive the Holy Spirit for ministry," etc. But since another opinion is also probable, it must be held, namely, that the presentation of the instruments is also an integral, partial matter, and therefore it should be said that the matter of the diaconate is twofold, namely, the imposition of the right hand of the bishop, with the form: "Receive the Holy Spirit, etc.," and the delivery of the book of Gospels with the form: "Receive the power to read the Gospel, etc." Both are partial matters and forms constituting one order. The delivery of the Scriptures would also be valid, since the Gospels are contained therein. But you will say: From the beginning, how were deacons ordained, when the book of Gospels was lacking? It is answered that Christ the Lord left to the Church the power to determine in specific terms the matters and forms of the sacraments, of which He Himself did not determine. And according to this opinion, the character is imprinted in the very act of delivering the book, as says St. Thomas, or in the giving of the second form (1); thus, according to this opinion; but see the statements in treatise 17, nos. 14 to 17. 91. — The duties of a deacon (besides those mentioned) are: 1. To solemnly baptize: but only with the permission of the parish priest, and in a grave necessity. Otherwise, a deacon who baptizes solemnly without a commission, even in a necessity, incurs an irregularity. 2. To minister the Eucharist; but likewise, it is not permitted, unless it is done with the commission of the parish priest, and in a grave necessity, namely, if the people are to be communicated, and there is no priest (2); otherwise, if he ministers without a commission, he also becomes irregular (3). 3. To carry the pyx or the ciborium with the Eucharist. 4. To preach, and to assist in the washing of the sacred vessels in the absence of a subdeacon. A deacon who is under censure incurs an irregularity if he performs these duties, as mentioned above, nos. 88 to II.

But he who, being under censure, accepts the diaconate, does not become irregular, unless, in the Mass of ordination, he voluntarily exercises the order received (4). It is asked whether the penance imposed by the bishop on deacons and subdeacons, namely, to recite the Nocturn of the day, and on priests to celebrate three Masses, is obligatory? Some affirm; but it is more probable that others (as Soto, Valentia, Castr., Pelliz., Gobat, etc., say) that it is to be done out of decency, but not out of obligation, at least not a grave one, since it is not certain (5). Section III. Concerning the Priesthood. 92 and 93. § I. What is the priesthood, and what are its matter and form? — 94. Regarding defects that must be remedied. — 95. § II. Concerning the sacrifice of the Mass. What is the sacrifice, and how many kinds are there? — 96. What is the Mass? — 97. Q. I. What is required for the Mass? Concerning the matter of the Mass, and here concerning the bread. (1) Lib. 6, no. 748. — (2) No. 287, Q. I. — (3) No. 254. — (4) No. 799, Dubit. 3, v. Utrum. — (5) No. 849.

[*Latin ed. p. 789*]

OF THE PRESBYTERATE. 777 — 98. Concerning wine. — 99. Concerning the presence of the substance. — 100. Concerning the form. — 101. Question II. How is Christ present? — 102. Question III. The effects of the Mass. — 103. For whom may it be offered? — 104. Question IV. What is the threefold fruit? — 105. Is the Mass of infinite value? — 106. Question V. Concerning a lawful stipend. — 107. Delay of the Mass. — 108. Retention of a portion of the alms. — 109. Concerning the parish priest, etc. — 110. Application. — 111. Question VI. The obligation of celebrating. — 112. Question VII. Are all rubrics obligatory? — 113. Question VIII. When may the Mass be said? May it be said before Matins? And may it be said on the Lord's Day and the holy Sabbath? — 114. Question IX. Where should the Mass be said? — 115. Concerning the pollution of the church. — 116. Question X. What is required for celebrating? I. The altar. — 117. II. The chalice and paten. — 118. III. Vestments. — 119. IV. The corporal. — 120. V. The pall. — 121. VI. The Missal. — 122. VII. The cross with the crucifix. — 123. May newly ordained priests consecrate, etc.? — 124. May three Masses be assigned, etc.? — 125. The Mass should be said aloud, briefly, etc. (We have spoken of those who speak with excessive haste in the celebration, Tract. XV, n. 84.) — 126. Concerning votive Masses. — 127. When may they be said multiple times in a day, etc.? — 128. If, while the Mass is being celebrated, the church is polluted, or an excommunicated person enters. — 129. § III. Concerning the priestly power, only a simple priest can confect and administer the Eucharist, and grant absolution from sins in cases of necessity. — 130. It is necessary for every priest to know the things required for administering absolution in cases of necessity. — 131 and 132. § IV. Concerning the duty of teaching and preaching. § I. Concerning the order of the presbyterate. 92. — The presbyterate is "an order by which

the power is conferred to consecrate" the body and blood of Jesus Christ, and to absolve the faithful from sins." This order was instituted by Christ at the Last Supper when He said: "Do this in memory of me"; and after the Resurrection, when He said: "Whose sins you remit, they are remitted." What is the matter of the presbyterate? According to our most probable opinion (as we have said here, n. 29, and Tract. 17, n. 16), it is singular, namely, the second imposition of hands by the bishop together with the priests. But it is also probable that it is twofold, namely, the tradition of the chalice with wine, placed upon the paten with the host, the form of which is: "Receive the power to offer the sacrifice," etc. And the third imposition of hands, the form of which is: "Receive the Holy Spirit; whose sins you remit, they are remitted." And this opinion, although probable, must be followed in practice (1); see the words in Tract. 17, n. 16. 93. — Hence, we say 1. that in the ordination of priests, along with the chalice and paten, both species, namely, the bread and wine, must be given; otherwise, the direct power to offer the entire sacrifice would not be given, and at the same time, it must be given, because the priestly power to sacrifice is indivisible; therefore, the more probable opinion which must be followed (2). Also, it must be given by the same ordaining and celebrating priest, as has been said here, n. 53, at the end. We say 2. that it is not sufficient to touch only the chalice and not the paten, because it is probable that both should be touched (3). We have said 3. that it is permissible for one who has been validly ordained, according to common opinion, to have touched only the host, and not the paten, because the host and wine are the substantial matter, and the chalice and paten are used only for decency; nevertheless, it is advisable to repeat such an ordination, because four doctors doubt it, and in the Pontifical (where the matter is discussed), it is said: "And let him touch both the chalice and the paten together" (4). And the same seems to be said of one who touches only the paten and chalice and not the host (5). 94. — It is asked, when must a defect be remedied in the ordination of the presbyterate? If the defect is concerning essentials, namely, concerning the matter or the form, the ordination must be entirely repeated; and indeed, the entire ordination if the defect concerns either the real body of Christ, or only the second, concerning the mystical body (1). See l. 6, n. 749. — (2) N. 750. — (3) N. 753. — (4) N. 751. — (5) N. 753.

[*Latin ed. p. 790*]

778 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. must be repeated. However, if the defect is in a minor matter, such as if the ordained candidate did not recite the creed, then such a ceremony (or a similar one) need not be repeated; but if the defect is in a major matter, such as if the unction of the hands was omitted, or if the newly ordained priest did not recite the words of consecration with the bishop, then the defect must be remedied as soon as possible, and by the same

bishop, if possible; otherwise, the ordained candidate would be gravely sinning by neglecting this, or in administering the sacraments (1). However, at what time must these defects be remedied? The answer is that if they are in minor matters, they can probably be remedied at any time; but, as Salmanticenses and others say, if they are in essential matters, they must be remedied during the times established for ordinations, as is gathered from chapter "De Sacris Ordinationibus" (2). Unless it is merely a question of the validity of the ordination, as several doctors probably believe (3). § II. Concerning the Sacrifice of the Mass. 95. A sacrifice, speaking in general terms, is defined as "an offering of a sensible thing made to God through immolation, as a sign of His supreme dominion." A sacrifice can be of four kinds: sacrificial, for the worship of God; eucharistic, for giving thanks; propitiatory, for obtaining forgiveness; and expiatory, for obtaining benefits. 96. The Mass, however, is defined as "the consecration and offering of the Body and Blood of our Lord Jesus Christ." And it is a true sacrifice, encompassing the nature of all other sacrifices; and it is the same Host that was offered on the cross, differing only in the manner of offering, as taught by the Council of Trent, Session 22, chapter 2. Some say that the essence of the sacrifice consists in the consecration, others in the offering, others in the consumption, and still others, more probably, in the consecration together with the consumption, as Bellarmine, Soto, Bonaventure, and Tournely say (4). However, for the essence of the sacrifice, it is more probable that the consecration of both species, namely bread and wine, is required, otherwise the commemoration of the bloody sacrifice of the cross would not be sufficiently expressed (5). 97. Question 1. What is required to perfect the Mass? Three things are necessary: intention, matter, and form. The intention of consecrating, or of perfecting the sacrament, is required, at least virtually, that is, one that persists from the actual intention previously held: certainly, one who prepares and approaches to celebrate has such an intention, as stated here in paragraph 9. More must now be noted about the matter and form of the Mass. The matter is Christ Himself, our Lord, truly present under the species of bread and wine. The bread to be consecrated must be usual and common, made of wheat flour and natural water (at least for the most part), baked by fire in the manner of bread, and not mixed with another substance either equally or almost equally (as says St. Thomas), and it must not be corrupted, or close to corruption, otherwise it is not suitable matter. However, for it to be licit matter, in the Latin Church, the bread must be unleavened, in the Greek Church, it must be leavened (6). It must be noted here that if a Greek celebrates in lands of the Latins (and vice versa), where there is no church in which the Greek rite is observed, he can celebrate either with unleavened bread or with leavened bread, according to his choice; so the doctors commonly teach (6). It must also be noted that it is not licit to consecrate a broken or stained host; but it is not a mortal sin, unless the fracture or stain was very enormous, as Quarti,

Pasqual, and La Croix add, with Gobato, that if a fracture is discovered after the offering, such a host may licitly (1) Book 6, paragraph 758. (2) Paragraph 759. (3) Paragraph 505. (4) Paragraph 506. (5) Paragraph 506. (6) Paragraph 205.

[*Latin ed. p. 791*]

OF THE SACRIFICE OF THE MASS. 779. It is consecrated, provided that no scandal is caused to the people (1). Note 3. The host must be of an oval shape, and larger than that for the priest; if a larger one is lacking, as Roncaglia, Quarti, Elbel, Gobat, and Tamburini say, the priest can, for reasons of devotion, consecrate a smaller one, provided (they point out) that no scandal is caused to the people; but they add that this scandal can easily be avoided by informing the people of the lack of a larger host (2). 98. The wine, however, must be expressed from grapes, to which a moderate amount of water must be added to the chalice by a grave precept of the Church (to signify the union of the faithful with Christ); this should not exceed one-third of the wine; although some doctors do not admit this opinion, unless the wine is of a generous quality. It is sufficient to add a single drop of water (3). Wine from unfermented grapes, vinegar, or "vappa" (that is, wine of which the strength has vanished), or "lora" (commonly called "acquata") are not suitable materials. Wine mixed with another liquid, even if in small quantity, or must freshly pressed from grapes, is indeed a suitable material for the sacrament, but it is gravely forbidden, as is stated in the rubric; the same is taught regarding wine that has begun to ferment, or has become corrupted, or has become somewhat sour. However, La Croix, Gobat, and Sporer (4) say that, if no other wine is available, it is permissible to use wine that is only slightly sour; indeed, Cardinal Lambert (Notif. 77, n. 2) says that the aforementioned rubric is derived from the teaching of St. Thomas (3d part, q. 74, a. 5, ad 1), who teaches that while one cannot indeed consecrate with vinegar, "one can with wine that is becoming sour, which is on the way to corruption, although it sins in doing so." Therefore, the rubric should not be understood with such rigor as to include even the first degrees of acidity, but only those that are so close to beginning to constitute sour wine, commonly called "wine with a few points of sourness," or "wine that is just beginning to turn." It is not permissible to consecrate in frozen wine, unless it melts during the consecration (5). However, it cannot be doubted that frozen wine is a suitable material, as is stated in the rubric (de Defectu, § in hieme): "If, in winter, the blood freezes in the chalice, wrap the chalice in cloths that have been heated, etc., until it melts." Therefore, by freezing, the species of the wine are not corrupted, otherwise Christ's blood would no longer be present there (6). What if the celebrant, during the consumption, noticed that the wine was corrupted? Some say that it is sufficient to perform only the consecration of the wine; but it is better, according to the rubric (unless

there is a scandal), to consecrate again both the wine and a new host, beginning with the words: "Who on the day before..." see the words in tr. 15, n. 54. And if there is doubt as to whether the material is suitable, the consecration of the wine must also be repeated, as they truly say, Croix, Pasqual, and Aversa (against Tamburini and Sporer) because there is an obligation to make the sacrament complete (7). 99. Furthermore, for a valid consecration, it is required that the material 1. be manifestly (or at least morally) present; therefore, a material that is too small is consecrated invalidly; nor can it be perceived by the senses, or is very far away, or is placed behind the altar, or behind a wall. It is said to be morally present, because a blind man, or one who is in darkness, consecrates validly, if he is morally certain of the presence of the material (8). It is required 2. that it be certain and determinate, at least in some way; then, indeed, it is consecrated by a virtual intention, even if the priest forgets about it during the consecration (9). If, however, the chalice remains outside the altar at the time of consecration, it is more probable that it must be consecrated again, as Cardinal Lambert teaches (1) Lib. 6, n. 204. — (2) N. 205. — (3) N. 208 and 210. — (4) N. 206 and 207. Quær. 1. — (5) Cit. n. 207. Quær. II. — (6) Ibid. — (7) N. 206, v. Quoad. — (8) N. 211 to 213. — (9) N. 214 to 216.

[*Latin ed. p. 792*]

780 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION.

(1) concerning the fragments (1); for then it is doubtful whether consecration has been truly effected (2). Regarding the separate drops of wine, but those existing within the chalice, La Croix (3) states that it is advisable for the priest to intend to consecrate them, lest anything remain in the chalice that is not consecrated. However, it seems to me better to intend this concerning the drops nearest the bottom, not those further away (4). If small hosts are offered after the oblation, they are lawfully consecrated mentally, with the oblation supplying the intention, according to Gavant, Tanner, Possevino, Aversa, etc. This can probably also occur after the Mass has begun, as Gobat, Quarti, Burghab, Possevino, Diana, Tamburrini, and Cardinal Lambertini (5) state, at least if others were to be deprived of Communion, or even (I believe) if the communicant could not wait, or if a person of high rank or nobility requests Communion; in such cases, they permit the giving of a portion of the larger host, or the dividing of smaller hosts into several particles (6).

100. The words of the Eucharistic formula are those which are pronounced during the consecration of the bread and wine. Whether the words alone: "This is my chalice," are of the essence in the consecration of the wine, or whether other words are also required, is a matter of debate;

both opinions are probable, but certainly one gravely sins by omitting the others (7). Whether the words preceding the sacrament are necessarily required for consecration: "Who, on the day before he was to suffer," etc., the common opinion denies; but Scotus doubts, and his opinion is not without probability, according to Du Pasquier and the continuator Tournel. And I do not dare to say that it is improbable (8). The words of the Eucharistic formula must be pronounced clearly and meaningfully, that is, by reciting the words of Christ and applying them to the present matter, so that the matter itself is transformed into the Body and Blood of Christ, as the Council and Salmeron state with the theologians (9). If someone were to say, due to a stammer, "This is my body," or "This is my blood," or "This is my body, my blood," or "chalice," or "blood," it is validly consecrated, as Suarez, Lago, Croix, and others commonly state, according to c. Retulerunt, de Cons. d. 4, where it is declared that Baptism conferred "in the name of the Father, and the Son, etc.," is valid; the reason is that the words are such that, even if they are sometimes uttered with a defect, they signify the same thing, provided they do not introduce another meaning (10). It should be carefully noted what the rubric states (title 5, n. 2): "If the celebrant does not remember having said what is commonly said in the consecration, he should not be disturbed (i.e., he should repeat it). But if he is very likely to have omitted something essential, he should repeat the formula, at least tacitly intending to do so."

101. Question II: How is Christ present in the Eucharist? It is answered that Christ is not present in the Eucharist by production, nor by being brought down from heaven, but by the conversion of the substance of the bread into the substance of the Body of Christ, to which conversion the term "transubstantiation" is appropriately applied. Christ is sacramentally contained under the species of bread and wine, and in an ineffable way, which must be believed but cannot be understood (as the Council of Trent states in session 13, chapter 1: "we can scarcely express it in words"); for the Savior exists there without extension of parts in relation to place, and yet He is there as the whole Christ, with His soul and divinity, by concomitance: and each part of Christ exists there outside the other. And Christ is whole and entire under each part of His own species (1).

(1) De Sacr. Miss. lib. 5. cap. 18. n. 6.

(2) Lib. 6. n. 217.

(3) Croix lib. 6. p. 1. n. 449.

(4) See our work lib. 6. n. 217. v. IV. Si parvæ.

(5) Lamb. de Sacr. Mis. l. 3. c. 18. n. 5.

(6) See our work l. 6. n. 217. v. IV. Si parvæ.

(7) N. 223.

(8) N. 222.

(9) N. 220. in fin.
(10) N. 224.

[*Latin ed. p. 793*]

OF THE SACRIFICE OF THE MASS. 781, as taught by the Council of Trent, Session 13, Chapter 3. However, it must be understood that a distinction is made, as expressed therein, Canon 3. For although the universally affirmed opinion is the more common one, there are those who maintain the opposite. In the Eucharist, although the person of the Father and the Holy Spirit are not taken, as is the person of the Word, which is hypostatically united to humanity, nevertheless, the persons of the Father and the Holy Spirit are also present in the Eucharist through the natural union, or the divine identity, which they have with the Word. 102. — It is asked: Who are the offerers in the Mass? And what are the effects of the Mass? There are three offerers: Christ, who is the principal offerer; the Church; and the priest, who offers as a minister, both of Christ and of the Church, as Bellarmine teaches (1). The effects of the Mass are four: I. It is the remission of sins, not immediately and by itself, but mediately through the help obtained in the Mass for penance, through which forgiveness is then obtained: thus, commonly, Bellarmine, Suarez, and others, with St. Thomas (2), who says that the Mass remits sins, insofar as it obtains the grace of contrition. And this is rightly taught and commonly by the authors, with the same Doctor (loc. cit., art. 1, ad 1.), against Canus and Valentia (3), proceeding both in the remission of mortal and venial sins. II. It is the remission of punishments; these are remitted immediately to the just person for whom the Mass is offered; commonly, Gonzalez, Suarez, the Council of Salm, and others, with St. Thomas (4), say that this sacrament, insofar as it is a sacrifice, has a satisfying power. III. It is an increase of grace, not already from the work performed, and immediately, as some believe, but mediately through the helps obtained from the Mass for perfecting good works, through which grace is increased, as Castrop, Vasquez, Suarez, Lugo, etc., commonly teach. IV. It is the obtaining of both spiritual and temporal benefits, to the advantage of souls (5). 103. — It is asked: For whom can the Mass be offered? It can be offered for all the faithful, for infants, for the sick, and for others, even if they are in sin. But for the excommunicated? If they are to be avoided, the priest cannot offer the Mass for them in the name of the Church, or as a minister of Christ, Chapter 2, of Sentences, on excommunication. But if they are tolerated, it is more probable, with Sanchez, Navar, Lugo, etc., against others (6), that the priest can offer the Mass for them even in the name of the Church; for although those who are tolerated are excluded from the communion of the sacraments, it has been granted by the Council of Constance (as is found in the extra of Martin V, "Ad evitanda"), that they can freely communicate with them in the divine services, as has been said in Tractate 19, on Censures,

number 15. Likewise, it is also probable that the Mass can be offered for the unbelievers, as Bellarmine, Layman, Suarez, Salm, etc., teach, against Soto, because Christ offered Himself for all; and this was certainly permitted in the Old Law; for the Jews were accustomed to sacrifice for the Gentiles (1 Maccabees 12:11). But for the dead who are in Purgatory, it is certain, and of faith, as taught by the Council of Trent, Session 22, Canon 22, and in Canon 3, that the Mass is offered lawfully and profitably. And this is from the infallible promise of Christ, as commonly and truly (against Canus, etc.), Azor, Suarez, Navar, Salm, etc., teach (7), because it is certain that the Mass is profitably offered for the dead, this cannot be unless it is from the promise of Christ. 104. — It is asked: How many are the effects of the Mass? It is answered: The effect of the Mass is twofold: one is from the work performed, namely, from the merit of Christ; the other is (1) De Sacr. Missæ, cap. 4. — (2) In 4 dist. 12, quest. 2, art. 2, quest. 2, ad 4. — (3) Lib. 6, p. 311. — (4) 3, p. quest. 79, art. 5. — (5) Lib. 6, n. 311, vol. II, Effects. — (6) N. 509. — (7) N. 519.

[*Latin ed. p. 794*]

782 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. The effect of the work depends on the merit of the priest performing it. There is a meritorious effect, a satisfying effect, and an impetratory effect. There is also a general effect, which extends to all the living and the dead; a special effect, or a medium effect, which extends to those assisting at Mass and to whom it is applied; and a most special effect, which extends only to the celebrant, who cannot receive any payment for it, as condemned by Alexander VII in Proposition 8.

— Is the Mass of infinite value, both in its intensity and its extent? Many doctors deny this; but many others affirm it with good reason, such as Gonnet, Habert, Juvenal, Petrocchi, Pegnat, Tournhem, the Council of Holzmann, Wigandt, La Croix, Canus, Salm, and others; and St. Thomas is also among them, because the Mass is the same as the Sacrifice of the Cross, which was of infinite value. However, although the value is infinite, the effect of the Mass is finite, due to the finite capacity of the people for whom it is offered, and each person receives the fruit according to their capacity. But since the first opinion is also probable, the priest cannot receive a double payment from two people by applying the Mass to both of them, as falsely claimed in Proposition 10, which was condemned by the same Alexander VII. Nor can he apply it generally to the person giving him the alms, unless he does so under the condition that it is permissible (1).

106. — What about the payment for Mass? It is permissible for priests, even wealthy ones, to receive payment, as commonly taught by Suarez, Lugo, the Council of Tournhem with Garz, and others; and by Thomas, and many others (contrary to Gennet and a few others), because "every worker is worthy of his wages," according to the Apostle in 1 Timothy 5:18

(2).

107. — The priest sins gravely if he delays a promised Mass for payment for more than two months, as stated by Garcia, Philip, Ripa, and others with Lugo; and by the Instructor of confessors, in the new edition (3), and by Tournhem, who says that it is the common opinion, that "someone can accept payments for Masses up to two months" (4). The Council also states that a delay of two months is serious, according to a decree of the Holy See. If the Mass is for the dead, a delay of one month will be serious, as stated by Castrop, Escolano, and Salm (5). Indeed, if the Mass is to be said for an urgent need, such as imminent death or another danger, then even a delay of a week may be mortal, as noted by Cabrini (6). However, the continuator of Tournhem rightly points out that if someone gives many Masses to a community for celebration, it is not presumed that they are content with the Masses being celebrated with such a delay, as if they had given them to a single priest. This is not to be understood as meaning that all the priests of that community must be occupied with saying them consecutively; it should always be assumed that the community has other obligations. Rather, it is that the Masses are to be distributed to a larger number of priests (or at least to a number of them that is appropriate to the size of the community), and that the community can then fulfill its obligation during the time allowed to each priest. Furthermore, it should be noted that Innocent XII, in the Bull Nuper, in the year 1667, ordered all rectors of churches to display a table of the charges for temporal and perpetual Masses, so that they would not burden people with new charges that they could not fulfill as they should (7).

108. — No one is allowed to give Masses to others for celebration, retaining a portion of the payment.

[*Latin ed. p. 795*]

OF THE SACRIFICE OF THE MASS. 783 Under penalty of suspension, reserved to the Pope, if a cleric, and excommunication, if a layman, as stated in the bull *Quanta cura*, by Benedict XIV. And the portion retained must then be returned, and preferably to the priest celebrating, rather than to the poor. Unless a larger sum is given to someone by reason of their person, or benefice, or chaplaincy (even a removable one), or perpetual legate; in which case, that person may retain the excess. However, administrators of churches, by decree of the Sacred Congregation, confirmed by Innocent XII, may retain nothing, nor even for expenses incurred in celebrating Masses, unless the church has other revenues (1); see also other matters discussed more fully regarding the stipend for Mass, treatise 15, numbers 65 and 109. — Parishes, by the bull *Cum semper*, of the same Benedict XIV, dated August 19, 1744, are obligated to offer a Mass for the people on all feast days, even if they do not have adequate sustenance. However, if they have substantial revenues, they are not obligated to offer Masses as frequently,

as stated in the same bull (2); see the statements in treatise 7, number 29. It should also be noted here that in the same bull, the Pontiff decreed that the Mass offered by the clergy each day should be offered for the benefit of benefactors, considering benefactors in general, regardless of any custom to the contrary (3). 110. — The application must be made before the celebration, or before the consecration. However, it is more accurate (whatever others may say) that a habitual application of the Mass is sufficient, as commonly taught by Suarez, Lugo, Bona, Tournhem, Holzapfel, and others (4). If no Mass is offered for anyone, the fruit remains in the treasury of the Church; an application made under a condition not fulfilled is valid; however, if it is made by the one who offers the alms first, it is not only illicit by the prohibition of Clement VIII, but is also often invalid (5). 111. — Question VI: Is a priest ever obligated to celebrate Mass during the year? Some, such as Bona and Cajetan, and it is probable according to Suarez and Palaus, deny this, except in cases of grave scandal. However, others, more commonly with St. Thomas, maintain that the words of Christ, "Do this in memory of me," probably contain a precept that a Mass should be offered, as the Council of Trent clearly states in Session 22, chapter: "From the Apostles... and their successors in the priesthood, it was commanded to offer sacrifice through these words: Do this in memory of me." The aforementioned doctors state that priests are obligated to celebrate at least three or four times a year, on the more solemn feasts. However, pastors are obligated to precept Mass on each feast day, so that the faithful may hear it (6); see the statements in treatise 7, number 29. 112. — Question VII: Are all the rubrics in the Missal mandatory, or are some merely directive, or advisory? There are different opinions on this matter. We follow the opinion of Quarti, Merati, and Tournhem, who state that all the rubrics concerning actions to be performed during the Mass are mandatory, and bind according to the importance of the matter; for in the bull of St. Pius V, it is stated: "Strictly prescribing" that the Mass should be celebrated, read, and sung according to the rite, manner, and norm prescribed in the Missal." Note the phrase "strictly prescribing" (7). However, several doctors probably state that some rubrics concerning actions to be performed outside of the Mass are merely directive, such as the washing of hands after Mass, and prayer before or after Mass (8). Furthermore, it should be noted here that the rubrics prescribed in (1) See book 6, numbers 321 and 322. — (2) Number 325, Question II. — (3) Number 326. — (4) Number 335, Question I. — (5) Number 337, vide. — (6) Number 315. — (7) Number 399. — (8) See numbers 409 and 410.

[*Latin ed. p. 796*]

784 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. Everywhere, the bishops are bound by the ceremonial, as is stated in three bulls, which say: "The aforementioned ceremonial must be observed

in all churches," especially in cathedrals and collegiate churches.

113. — Question VIII: When may Mass be said? The rubric states: "Private Mass may be said at least after Matins and Lauds, at any hour from dawn until noon." However, the doctors commonly say that it is permissible to end Mass at dawn, and to begin it shortly before noon. Indeed, Benedict XIII and Clement XII declared that a latitude of one-third of an hour may be tolerated, both before dawn and after noon (1). Furthermore, it is commonly and more likely said by Sylvius, Castrop, Bonac, Ronc, Viv, Salm, etc., that the celebrant does not commit mortal sin unless he begins Mass one hour before dawn, or one hour after noon; otherwise, he commits only a venial sin, for which any reasonable cause excuses him; indeed, a more serious cause, such as the administration of Holy Communion, or a solemnity, a journey, or a funeral, completely excuses him, even if the delay is for a full hour (2). It is permissible to administer Communion until Vespers, exclusively; and even at Vespers, if there is a special reason, provided it is not at a very late hour (3). However, to celebrate Mass before Matins and Lauds, some say it is mortal, others say it is no sin, and still others, more truly and commonly, as Suarez, Sotus, Sylvester, Tournhem, Bellarmine, etc. (to whom even Benedict XIV in *De Sacrificio Missae*, book 3, chapter 1, number 4, assents), say that it is not mortal, because such a grave obligation is neither expressed in the rubric, nor is it commonly accepted as grave; but they do not excuse it from a venial sin, since it is already counted among defects in the rubric (4). However, to say a conventual Mass before Matins and Lauds, one is not excused from mortal sin, as commonly taught by the doctors, contrary to Sanchez (5). To celebrate Mass on Holy Thursday and on the holy Sabbath (whatever others may say) is in no way permitted, nor even privately, as is clear from the decree of Clement XI, which is referred to (6), and which was confirmed by Innocent XIII, in Merat, in the Index of Decrees, numbers 495, 501, 504, and 632.

114. — Question IX: Where is it permissible to celebrate Mass? It is answered: In chapels that have been blessed and designated by the bishop for sacred uses, or in seminaries, boarding houses, and hospitals, and also in private homes (provided the chapel has a door to the public street); also in chapels of religious orders (regarding the regular clergy, see the aforementioned, section 20, numbers 121 and 122), as well as in those erected in palaces of bishops, all may celebrate, at any time, even on solemn feasts, because such chapels are true churches. However, in private chapels, in which it is only permitted to celebrate Mass by special pontifical privilege, it is not permitted to perform the sacred rite, except for those to whom it has been expressly granted, namely, on Easter, Pentecost, the Nativity of the Blessed Virgin, the Epiphany, the Annunciation, the Ascension, the Assumption of the Blessed Virgin, the feasts of Saints Peter and Paul, and all other saints. Nor can Mass be celebrated there, unless one of those to whom the privilege has been directly granted is present, as declared by Benedict

XIV in *Cum duo nobiles* (7). Nor can more than one Mass be celebrated there, if it is said (as is customary) that only one Mass is celebrated daily; for Benedict XIV declared in the bull *Magno*, dated June 2, 1751, that one and the same is equivalent to a single one (8). But can Communion be administered in these private chapels? Some affirm, others commonly deny; and Benedict XIV (1) *Lib. 6*, number 541, verse: "All." — (2) Numbers 543 to 546. — (3) Number 2f. — (4) Number 347. — (5) Number 348. — (6) Number 350. — (7) See Bullarium Mechinense, volume 15, page 220, and *Lib. 5*, number 319, "probable." — (8) *Lib. 6*, number 359, near the end.

[*Latin ed. p. 797*]

OF THE SACRIFICE OF THE MASS. 785 In the encyclical letter to the bishops of Poland, §23, dated the same day, June 2, 1751, it was forbidden to administer Holy Communion in private chapels without the permission of the bishop (1). However, it is never permissible to celebrate Mass at sea unless with express permission from the Pope (2). 115. — A priest who celebrates Mass in a church defiled by a notorious shedding of blood in a notable quantity (for in chapter 10 of the Council it is said that the shedding of blood is a defilement), or by semen, or by the burial of an unbeliever, heretic, or excommunicated person, before that person is reconciled by the bishop (or by a priest delegated by the bishop, if the church is only blessed), sins gravely; but incurs no penalty, as is more probably taught by Suar., Laym., Lug., and others, with Benedict XIV on the Holy Mass (3). Similarly, it is mortally sinful to celebrate Mass in a desecrated church, namely, if at the same time the walls are demolished for the greater part, or the plaster is removed (4). However, is it permissible for priests to celebrate Mass in churches of regular canons against the prohibition of the bishop? See the statements in part 20, numbers 75, 77. 116. — It is asked whether certain things are required under a grave precept for the proper celebration of Mass? The following are required: 1. An altar, or a stone altar consecrated by a bishop, with a repository for relics and a seal, where the consecrated Host and particles must always be kept (5). However, the altar is desecrated if, as is mortally sinful, the consecrated table is removed from the lower structure, or if the altar is notably broken, or if the relics or the seal are removed from it, as is stated in the decree of the Holy Congregation of Rites (6). Three cloths are also required for the altar, and two are not sufficient, as some say; however, one separate cloth and another doubled are sufficient (7). 117. — 2. A consecrated chalice and paten are required. However, the chalice is desecrated if it is notably broken in the cup, or if it is pierced in the bottom; but not if its gilding is lost, as is more probably and commonly taught by Lugo, Suar., Sylv., Tourn., Laym., etc. Therefore, it is more probable that a chalice that has been newly gilded does not require a new consecration; however, this is understood if only the surface of the chalice is gilded, for if the entire surface of the

chalice is removed in order to gild it, then it is more probable, with Suar., Sylvio, and others, that the chalice must be re-consecrated; by analogy to the Church, which (as we said in number 115, near the end), if its plaster is completely or mostly lost or removed, must be re-consecrated. However, it is more probable that it is permissible to celebrate Mass in a chalice that has never been gilded, but only venially, as say Lug. and Tourn. If the chalice is separated from the base, it certainly loses its consecration if the cup is fixed to the base; otherwise, if the base is detachable and separable (8). Commonly, Laym., Gav., Tournel., Bon., Ronc., etc., teach that the pyx is not to be consecrated (9). However, it is doubted whether it should at least be blessed? Commonly, Suar., Sylv., Azor., Sot., etc., deny this, and this does not seem improbable, but Salm., Tourn., and others, with Cardinal Lambertini, more probably affirm it (who, however, does not consider the omission to be more than venial), because this is more in conformity with the rubric of the missal, in which it is said that the priest places the Hosts for Communion before the chalice, or in some clean and blessed vessel. And the same should be said of the lunule of the ostensorium, where the Host is placed in expositions (10). 118. — 3. Sacred vestments are required, blessed by the bishop, or by another who has the power from the Pope. He who celebrates Mass without (1) Lib. 6. n. 359. v. Quæres. — (2) N. 558. circa fin. — (3) N. 361. ad 366. — (4) N. 567 et 568. — (5) N. 572 et 573. — (6) N. 569. — (7) N. 374 et 375. — (8) N. 370. — (9) N. 384. — (10) N. 385.

[*Latin ed. p. 798*]

786 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION.

alba, or stole, or maniple, or with those which are not blessed (unless grave necessity demands it); however, it is generally held that a priest celebrating without a cingulum, or having removed it, is not necessarily invalid.

Regarding the cingulum, the Sacred Congregation declared on January 21, 1701, that it is more fitting for a priest to use a linen cingulum than a silk one. Vestments are rendered unsuitable when they lose their proper form, namely, if a sleeve is cut off from the alba; if the cingulum is torn so that no part can encircle the waist; if the stole cannot cover the shoulders; or if a part of it is torn in such a way that its form is lost, and it cannot be repaired, for when the form is destroyed, the parts cease to be sacred.

The color of the vestments is preferably that which is prescribed, but not necessarily of great importance.

119. It is required that there be 4 corporales (cloths for the chalice and paten) blessed, made of linen or cotton. A corporal is rendered unsuitable if it is broken in such a way that it can no longer decently contain the chalice

and paten with the sacred host.

Care must be taken that the corporal is not excessively soiled, as Suarez, Laym, and Tamburrino state that even grave sin can occur in such cases; although Tamburrino adds, from the same Suarez, that it is difficult for a corporal to become excessively soiled. However, to use a corporal and other vestments that are only slightly soiled is not excused from venial sin unless none are available, as stated by Croix, Suarez, and Gobat. Indeed, Tournhem asserts that in necessity, namely, if a priest or others were obliged to omit Mass, it is permissible to use a corporal that is noticeably soiled.

120. The palla (a large, ornate cloth) must also be blessed, and made of linen or cotton, at least on the inside, as Suarez states; but a decree of the Sacred Congregation stated: "A palla should not be used if its upper part is covered with silk." However, it is generally held by Soto and others that celebrating without a palla is not a mortal sin, since the sacred species does not directly touch it.

A purificatorium (cloth for wiping the chalice) is also required, and it is generally not necessary for it to be blessed.

121. It is required that there be a 6. Roman Missal containing at least the entire canon. Suarez, Vasquez, Laym, Palaus, Lugo, Salmant, Croix, and others commonly and probably state that a priest does not sin by celebrating without a Missal, if he knows the words to be said by memory, and if, due to past experience, there is no danger of error. However, to use a Missal belonging to a religious order (namely, celebrating according to their rite) is a mortal sin, even within their own churches.

122. It is required that there be a 7. minister present under grave obligation, at least until the offering, unless urgent necessity demands that the viaticum be administered, or even that the sacred rite be omitted on a feast day. The minister must be male, for women are strictly forbidden under grave penalty to minister immediately at the altar. However, Laym, Suarez, Tournhem, Molfino, Homilton, and others commonly state that one does not commit a grave sin by having a woman respond. Indeed, Paludanus, Wigand, Tournhem, Lugo, Laym, and others state that it is permissible for women to sometimes respond from a distance, especially if they are nuns, provided (as we have said) that they do not minister immediately at the altar.

123. It is required that there be an 8. crucifix, even if the Blessed Sacrament is exposed on the altar, as is stated in the ceremonial of bishops and in a decree of the Sacred Congregation. Whether celebrating without a crucifix is a mortal sin is generally denied by Laym, Suarez, Bonacini, Tournhem, Concini, Habert, Merati, and others; but it should be noted that Benedict XIV, in a decree addressed to all bishops dated July 16, 1746, beginning with "Accepimus" (see in Bullarium, Lib. 6, n. 377),

(1) Lib. 6. n. 377.

(2) N. 371.
(3) N. 378. Dob. 5.
(4) N. 386.
(5) N. 371.
(6) Ibid.
(7) N. 388.
(8) N. 389.
(9) N. 390.
(10) N. 391 et 392.

[*Latin ed. p. 799*]

OF THE SACRIFICE OF THE MASS. 787, vol. 2, decree 17.) Thus, at the end, it is prescribed: "We command that in no way should the divine service be performed at altars which do not have a crucifix prominently displayed among the candlesticks, so that the priest and the people may easily and conveniently be able to see the same crucifix; which cannot happen if only a small cross is affixed to a smaller tablet for the faithful to see." Previously, in the same decree, it was said: "We cannot in any way permit that the sacrifice of the Mass be celebrated in altars which lack an image of the Crucifix, or if the Crucifix itself is placed unsuitably before the celebrating priest, or if it is so thin and small that it almost escapes the eyes of the priest and those assisting." It should also be noted from the ceremonial of the bishops that if a statue of the Crucifix is present on the altar, another cross should not be added. This is confirmed in the aforementioned decree of Benedict, where it is upon the opinion of Paschal Quartus and Girib, to which the Sacred Congregation of Rites conformed in a certain decree (June 16, 1663), apud Meratum (n. 400), that it suffices to have the Crucifix depicted or placed on the main tablet of the altar. Pignatel also teaches (1) that it is not necessary for the cross or other sacred images to be blessed (2). It is required (3) that two candles be lit, made of wax, not of tallow or oil, unless the Mass is being celebrated out of necessity, but not out of devotion. It is also required (4) that there be a burse, veil, pall, and manutergium; but La Croix says that it is not a sin to celebrate without these. Finally, it is said (5) that it is mortally sinful to celebrate with the head covered throughout the entire Mass, otherwise, only up to the canon.

123. — Note 1. That even if neopresbyters celebrate with a bishop, they truly celebrate, even though they perform only one sacrifice; in which the primary celebrant is the bishop, and the priests are also total causes of consecration, but moral causes, which produce one effect; in distinction from total physical causes which produce diverse effects. However, each one ordained to the priesthood must then pronounce the words of consecration, with the intention of consecrating, but under the condition that they conform at the same time with the words of the bishop; otherwise, he

would sin gravely (6).

124. — Note 2. That the bishop commands the neopresbyters to celebrate three Masses, one for the Holy Spirit, another for the blessed Virgin, and a third for the dead. Whether this is a grave obligation is affirmed by Suarez, Laym, Azor, etc., but denied by Soto, Palaus, Val. Pelliz, etc. However, two things seem certain: 1. that those who transgress this precept of the bishop at least commit a venial sin; 2. that this kind of precept does not obligate one to offer the Masses for the bishop, since it is not expressed; much more so because he adds: and also pray for me. Note that these three Masses must be said on the first days in which votive Masses can be said (7).

125. — Note 3. That, as is commonly taught, the Mass must be celebrated loftily, briefly, clearly, devoutly, and exactly. Loftily, so that what should be said loftily is not said submissively, but is pronounced in such a way that at least those nearby can hear it, as the rubric says; otherwise, the celebrant is not excused from guilt, but only from a venial sin. The same must be said of one who recites loftily what should be said submissively. Indeed, Gavantus and Quartus believe it to be mortal (but they do not sufficiently prove this), to say aloud in a loud voice what should be said submissively, and La Croix agrees regarding the words of consecration, saying that it is sinful (1) Pignatell. vol. 9. Consult. 186. n. 6. — (2) Lib. 6. n. 393. — (3) N. 394. — (4) N. 395. — (5) N. 397. — (6) N. 323. — (7) N. 829.

[*Latin ed. p. 800*]

788 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. Those who recite these [prayers] must do so with such reverence that they can be heard up to ten paces away, especially when a large portion of the people are present; but Father Concina does not dare to approve of this practice (1). Briefly, that is to say, ordinarily speaking, the time should not exceed one hour, as the rubrics instruct that Mass should not be celebrated too slowly, lest the listeners become bored. Furthermore, the rubrics state that it should not be celebrated too quickly: hence, the wise Cardinal Lambertinus (2), along with others, rightly states that Mass should not be longer than half an hour, nor shorter than a third of an hour. How those who celebrate too quickly sin, see the aforementioned treatise, paragraphs 15, 48 and following, where we stated that Mass (even for the dead) celebrated in less than a quarter of an hour is not excused from a grave fault. Clearly, that is to say, without omitting any words; if there is an omission, and the meaning is altered thereby, it is a mortal sin (3). Devoutly, that is to say, without distraction; if this distraction is voluntary during the canon, and especially during the consecration and the reception of Communion, it is a mortal sin, as Tamburinus asserts, although some disagree. If it occurs outside the canon, the same is said as is said about canonical hours (see appendix, paragraph 75). Exactly, that is to say, without omitting anything that must be said. It should be noted here that if parts that are ordinarily

recited are omitted, namely those that must always be said or done in Mass, it is a mortal sin if the omission is significant, just as it would be to omit any prayer in the canon, or the Our Father, or the breaking of the host and its mixing in the chalice, or the purification of the paten and chalice after Communion, or the eight or ten words of the canon. Similarly, it is a mortal sin to omit the entire Introit, or two of the principal Collects, or the Epistle, the Gospel, the Offertory, or the infusion of water into the wine to be consecrated, outside the canon. However, it is venial to omit only the Psalm, the Kyrie eleison, one of the Collects, one or both crosses over the offerings, the touching of the breast, or the washing of the fingers, and the same is probably said about the Lugo, and others about the Gospel of St. John (4). It is also venial to omit only the extraordinary parts, such as the Gloria, the Creed, the Sequence, the Tract, the proper Preface, or the Communicantes, and the Hanc igitur proper, as all commonly say, unless so many parts are omitted that they constitute a significant omission, as Conc. and Wigandt rightly point out, whatever they may say in Quarti and Pasqual. (5). 126. — Note 4. Votive Masses, or Masses for the Dead, are prohibited on Sundays and double feasts, and on privileged octaves; unless there are serious reasons, namely if there is a public necessity, if there is an exposition of the Blessed Sacrament for 40 hours, or on the day of death with the body present; but these are to be understood only of the solemn Mass (6). But are votive Masses forbidden on the aforementioned feasts under grave guilt? Lugo, Suar., Bonac., Escob., Salm., Ronc., and many others generally deny this. However, Escob. and Roncagl. rightly limit this, if a solemn feast occurs at that time, at least because of the grave scandal to the people. Indeed, in double feasts, Masses for the Dead are strictly prohibited in the decree of the Sacred Congregation approved by Alexander VII; but in many cases, Masses for the Dead can be said on double feasts, even major ones, namely: 1. on the day of death, with the body present. And this even on a Sunday, or on other more solemn days, provided they are not of the first class. 2. When news of someone's death is first received. 3. On the anniversary left by the testator. Also on the third, seventh, and thirtieth days; but if these days fall on a feast of precept, they are transferred to the following day, or (r) Lib. 6 n. 415 and 416. — (2) Notif. 34. n. 3e. — (3) Lib. 6. n. 407. — (4) N. 405 ad 406. — (5) N. 409. — (6) N. 421.

[*Latin ed. p. 801*]

ON THE POWER OF THE PRIEST. 789 should be anticipated under the same rite. 4. On a double feast day, if an anniversary Mass is requested for a deceased person, it may be celebrated. This is evident from numerous decrees of the Sacred Congregation of Rites (1). However, with the exception of double feasts and other feasts as mentioned above, the rubrics state regarding votive Masses: "Votive Masses may be said in private Masses at

the discretion of the priests." But immediately thereafter, it warns: "This, however, should not be done frequently, unless for a reasonable reason, such as a special devotion of the priest, or a request from the giver of alms." Therefore, to say a votive Mass outside of these reasons is scarcely excusable. Furthermore, the priest is bound to celebrate votive Masses according to the request of those who offer alms, on days when it is permissible to do so. It should be noted, as St. Thomas (3) states, that a Mass for the dead is more beneficial to the deceased because of the prayers that are said during it. 127. — Note 3. It is not permissible to celebrate Mass more than once in a day, except in these cases: 1. to administer Holy Communion; 2. if on a feast day, persons who should not miss the Holy Sacrifice arrive, such as a king, or a prince, or a bishop; 3. if a pastor has two parishes located far apart, and otherwise the people of one parish would be deprived of Mass on a feast day of precept (4). However, Pope Benedict XIV, in the brief *Declarasti*, published in 1746 (in Bullarium, vol. 2), stated that in this matter, permission must always be obtained from the bishop, even if a necessity seems to exist. Furthermore, he stated that of the cases mentioned, only the case of parishes located far apart is customary. It should also be noted that it was formerly permitted for a priest on a Sunday after Mass for the people, to say another Mass for the dead, in the presence of a corpse; but the same Pope Benedict XIV, in the indult *Quod expensis*, etc., granted on August 26, 1748, in § Nova, towards the end (in Bullarium, vol. 2, and in the Mechlin edition, vol. 6, p. 241), declared that this is no longer permitted today, since it is permissible for a priest to say a Mass for the dead, and to postpone the Mass for the people to the following week. 128. — Note 6. If, while the Mass is being celebrated, the church is profaned, or an excommunicated person enters who refuses to leave when warned, then the priest must dismiss the Mass before the consecration; but after the consecration, he should continue until the reception of Holy Communion, and then immediately leave: see the aforementioned treatise, 19, no. 21, ad II. Finally, it should be noted that after the consecration, it is never permissible to interrupt the Mass, except only to baptize, or to absolve a person who is already dying: so the doctors commonly teach (5). § III. On the power of the priest. 129. — A simple priest can, by the power of the order he received, only confect the Sacrament of the Eucharist, and can also administer it, except for the Paschal Communion: for that, the power of jurisdiction is required. Therefore, he cannot, without the permission of the pastor, baptize, nor administer the last rites, nor administer Holy Communion, nor assist at marriages, and without the express permission of the bishop, or at least presumed present, he cannot receive confessions, nor even those of venial or mortal sins previously confessed, according to the decree of Innocent XI (see the aforementioned treatise, 16, no. 76). For, as is said in the Council of Trent, the judgment exercised in the administration of penance requires that jurisdiction be exercised only over those who are subject to the priest

with the permission of the bishop. 130. — We stated above in no. 35 that to initiate into the priesthood (1) Lib. 6, no. 431. — (2) No. 419. — (3) Suppl., q. 71, a. 9, ad 5. — (4) Cabr., c. 24, no. 416. And see Busemb., apud Lib. 6, nos. 361 and 353. — (5) Lib. 6, no. 584.

[*Latin ed. p. 802*]

790 APPENDIX III. EXAMINATION OF CANDIDATES FOR ORDINATION. They must possess knowledge of those matters which, at the very least, are necessary for hearing the confession of a dying person. Therefore, it is important here to note a few of the most important and most necessary points.

To be noted I. That a simple priest cannot absolve a sick person in the presence of an approved confessor, except in the following cases: 1. if the approved confessor is unable or unwilling to hear the confession; 2. if the approved confessor is excommunicated or suspended; 3. if the approved confessor is only approved in another diocese; 4. if the sick person is so afraid of confessing to him that he would be in danger of concealing his sins; 5. if the approved confessor arrives after the confession has begun with a simple priest; 6. if the approved confessor is involved with the sick person in a shameful sin (according to what is said in tr. 16, nos. 94 and 95, at the end).

To be noted II. That if the dying person requests absolution, or gives signs of repentance to the priest present, he must be absolved; but if he is deprived of his senses, and another person is present who testifies that he requested the confessor, or showed signs of sorrow, then some say that he can also be absolutely absolved; but it is safer to say that he should be absolved conditionally. And we believe that he should be absolved conditionally, even if the dying person has given no sign; indeed, even if he is in the act of sin (see the aforementioned passages in tr. 16, nos. 36 to 39).

To be noted III. That a simple priest, in the absence of an approved confessor, can absolve the faithful from any sins and censures, not only in articulo mortis, but also in a probable danger of death. It is considered to be in danger of death not only the one who is suffering from a disease that is immediately life-threatening, but also the one who is undertaking a long voyage, or a woman who is in difficult labor; also, the one who is in danger of becoming insane; moreover, the one who is a captive among infidels, lacking hope of freedom and of having an approved confessor.

To be noted IV. That a sick person who is absolved from reserved censures must be warned that if he recovers, he is obliged to present himself to his superior; otherwise, he will incur the same censures again; otherwise, if he is absolved only from reserved sins without a censure.

Finally, it must be noted that every priest, in order to be suitable in times of necessity for hearing the confessions of the sick, must not be ignorant of

at least the general principles of moral science.

§ IV. On the duty of teaching and preaching.

131. Since it is also the duty of a priest to teach the people and to preach the Gospel, it is worthwhile here to note what should be taught, and how the Gospel should be explained.

Regarding the first point, four things are necessary for salvation, namely faith, hope, charity, and good works. And 1. Regarding faith, because God, who is infallible truth, has revealed to the Church, we are bound to know and believe explicitly that God exists and is the rewarder, and the mystery of the Most Holy Trinity and the Incarnation of the Son of God. This is necessary for the essential; regarding the precepts, everyone is also bound to know and believe the Lord's Prayer, the Angelic Salutation, the commandments of the Decalogue, and the teachings of the Church; also, the sacraments, especially those which all need, namely Baptism, the Eucharist, and Penance, and others, at least when they are received. 2. Regarding hope, because God is Almighty, merciful, and faithful, we are bound to hope for eternal blessedness from God, through the merits of Jesus Christ, and for the means of attaining it, namely, forgiveness of sins and final perseverance. 3. Regarding charity, because God is infinite goodness, we are bound to love Him above all things; to this precept is added another of charity, namely, to love one's neighbor.

[*Latin ed. p. 803*]

APPENDIX IV. ADMONITIONS TO CONFESSORS, etc. 791 as ourselves. 4. In order to attain salvation, good works are also necessary, observing the commandments of God and the Church, which are contained in the Decalogue and the precepts of the Church. 132. — Regarding the second function of explaining the Gospel, or Scripture, it should be known that it has two senses, the literal and the mystical. The literal sense is that which is signified by the very words. The mystical sense is that which is not signified by the words, but by the thing which the words signify; for example, when it is said: "If thy eye scandalizes thee, pluck it out, etc." Here, the cutting off of the eye is not commanded, but rather the scandal, or occasion. The mystical sense is divided into three others: 1. the allegorical, namely, that which pertains to things to be believed; 2. the anagogical, pertaining to goods to be hoped for; 3. the tropological, pertaining to morals. Regularly, the words of Scripture should be taken in the literal sense, unless there is an absurdity, as when it is said: "The rock was Christ," and the like. Often, the texts of Scripture have both senses, the literal and the mystical. It is often fitting for priests to use the mystical sense in sermons, especially if it is tropological, or moral. It is also permissible to use the so-called accommodated sense at times, provided it is done piously and prudently. APPENDIX IV. On some more notable admonitions to Confessors and Parish Priests: with the addition at the end

of a practice of mental prayer, which they can teach to those who are not familiar with it. § I. Admonitions to Confessors. Of all that we have said above, the following are some of the most important things that a confessor should attend to in exercising his office. I. First of all, he must take care, on the one hand, to show the greatest charity in receiving sinners, and to stir up their spirits to place their trust in the mercy of God; but, on the other hand, he must be careful not to neglect those who need to be admonished with firmness, for the sake of human respect, and also to bring before their eyes the unhappy state in which they find themselves, prescribing suitable means by which they may free themselves from the evil habits with which they are already living. And especially, he must be unyielding in delaying absolution, whenever it is necessary. This first admonition is perhaps the most important of all; for if the confessor does not follow it, he will not work for his own salvation, nor for that of others. II. He should not fail to question the rude and those with neglected consciences, whether they know the principal mysteries of the faith, and other things necessary for eternal salvation, as was said in the preceding section, n. 18. And furthermore, he should not fail to ask them about those things in which they are most likely to fall, even if they do not accuse themselves of them, according to what was said from the cited section, n. 18 to 30. III. He must be very cautious in questioning about shameful matters, especially young girls and boys, lest they learn what they do not know, or at least be aroused to curiosity. On the other hand, he should not fail to inquire of them whether they have committed anything in these matters which they have concealed out of shame. And with regard to this, he should not be satisfied with asking them superficially and in general whether they are conscious of any sin omitted out of shame; for some, if

[*Latin ed. p. 804*]

792 APPENDIX IV. ADMONITIONS FOR CONFESSORS, etc. It is necessary, with the uneducated, with those who are guardians of flocks, with young girls and boys, to diligently inquire, once and again, about any sin they may be concealing, using shrewdness and circumlocution. This should be done especially to encourage them, and they should be told not to be afraid, because the confessor will absolve them from all sins; and that if they open the secrets of their consciences, they will then experience the greatest peace and consolation of conscience. This diligence should be exercised especially with those who are dying. And it will not be amiss if the same is done with girls who profess devotion: how many of these are burdened with sacrilege, because of some sin they have concealed! But, above all, cunning should be used with boys and girls who are not spiritual. First, ask if they have had bad thoughts? If they have spoken or heard obscene words? And then, if they have played games with each other? And whether they have done so openly? If they

affirm this, it will be a sign that the games were illicit. Moreover, there is a well-known rule given by St. Thomas (1): "Frequently, that which the penitent, blushing with shame, would conceal when asked, is revealed." And then: "In making inquiries, it must be noted that a direct question should not be made, except about those things that are manifest; but about other things, the inquiry should be made from a distance (note), so that if the sin has been committed, they will say so, and if it has not been committed, they will not add anything." The same saint warns confessors not to descend too deeply into the particular circumstances of shameful sins. It must be noted that, speaking regularly, those inquiries should not be omitted which are necessary to ascertain the substance of the sin with its species and number. Furthermore, it is helpful to note that if a confessor is accustomed to receiving confessions of sensual temptations, provided he does not consent to them, and does not voluntarily give cause for them, he should not be disturbed by fear, nor should he abstain from receiving confessions for that reason: for the demon intends, by disturbing him with such temptations, to remove him from the good that he is doing. Before entering the confessional, he should declare that he will not consent to any suggestions, he should commend himself to the most holy Mary, and then, in the confessional, he should raise his mind to God; and when he is more strongly afflicted, he should turn towards some devout image and commend himself to it. Moreover, for those who are of a timid conscience, it will be sufficient to watch over not giving consent to those suggestions, or to those sensual movements which they experience, as has already been said (tr. 3, n. 40 and seq.). IV. Parents and mothers should inquire not only in general about the education of their children, but also in particular, and especially they should inquire whether they properly correct their children; whether they take care that they learn Christian doctrine; whether they avoid the company of those who are of a bad example, or of a different sex, and especially if the children are girls, whether they associate with young men, and much less with suspicious people, that is, with married men, religious, and ecclesiastics. V. Even if there is a very large number of penitents, he should not hasten the confessions more than is necessary, so that, in hearing the confessions of many, he may lack either in the integrity of the confession, or in the proper disposition, or in suggesting the necessary admonitions to them. VI. When someone confesses a grave sin, and especially if he has repeated it several times, it is not enough to inquire only about the species and number; but he should inquire further whether he was accustomed to fall into it before, (1) St. Thomas in 4. D. 19. q. 2. in fin. Expos. text. v. Et dicendum.

[*Latin ed. p. 805*]

ADMONITIONS TO CONFESSORS. 793 Furthermore, he must inquire about the nature of the person with whom the sin was committed, and in

what place? so that he may determine whether it is a habitual inclination or an occasion that must be removed. And many confessors are deficient in this, and from this arises the ruin of many souls: for by omitting such questions, the confessor cannot determine whether the penitent is a relapsed sinner, and consequently, he cannot offer him the appropriate remedies to eradicate the habit or the occasion. It should be noted what was said in the preceding paragraph, from number 2 to 17, where we saw number 9, that a relapsed sinner cannot be absolved unless after an experience of amendment, or after exhibiting some extraordinary sign of his disposition. And when it is a matter of a proximate occasion, he must be firm and resolute, setting aside all considerations of persons, in delaying absolution, until the penitent removes the occasion, as long as it actually exists, as we explained in number 7. But if the occasion is unavoidable, at least until it can be made remote by employing the means prescribed to him, ibid. number 6. Above all, he must be unyielding in denying absolution to those who are accustomed to intercourse with each other, as well as to parents who permit it, and he must not believe them when they assert that there is nothing evil between them: for this is morally impossible, as experience teaches; see the preceding paragraph, number 3, where mention is also made of those who are at odds with each other. VII. He must also deny absolution to those who aspire to be promoted to some sacred order, as long as they are still held by some vicious habit, unless he has first ascertained that they have attained positive probity, which is so greatly required by the sacred canons for this grade, as stated ibid. numbers 16 and 17. VIII. He must also take care not to dissuade any adolescent from a religious vocation for human reasons; for this cannot be excused by mortal sin, as taught by St. Thomas, Quodlib. 3, a. 14. How many inexperienced confessors do not cause themselves scruples by turning young people, who are called to a higher state, away from a good purpose, guided by no other reason than that they are pleasing to their relatives, asserting that children should follow the example of their parents! The doctors commonly teach, along with St. Thomas, that in the choice of a state, each one should enjoy his own freedom; and that he should obey God rather than his parents. On the contrary, the confessor must not absolve those who do not wish to ascend to the sacred orders, as noted more fully in Appendix III, number 45. IX. In receiving the confessions of priests, he must be gentle and courteous, but he must be firm in applying the necessary corrections, or in denying absolution, when the reason of judgment so requires. He must especially act with firmness towards priests who, having relapsed into grave sins, have dared to celebrate, seeking absolution from some confessor who performs this office, and who are trying to condemn them. These priests, held by bad habits, often confess publicly in the sacristy, in order to extort absolution, which should be denied to them, under the pretext of scandal that would occur (as they explain), if they were to abstain from celebrating. The confessor

must be steadfast in delaying absolution in such cases of sacrilege, he must compel them to repeat their confessions as invalid, and to confess about all the Masses celebrated; and in the meantime, he must forbid them from celebrating, until they show clear signs of their amendment. And if anyone were to say that he cannot abstain from celebrating for fear of scandal, he should reply that the just cannot.

[*Latin ed. p. 806*]

794 APPENDIX IV. ADMONITIONS FOR CONFESSORS, etc. pretext, if he wished to desist from celebrating; however, if he himself refuses to do so, he should say that he can celebrate, if he is certain that he has contrition, but that he himself, for the time being, cannot absolve him, since he is not sufficiently certain about his disposition; indeed, he has a just reason to believe the opposite, given that he observes so many relapses without amendment. And by acting in this way, it can be hoped that the poor priest will recover and be saved; otherwise, he will be condemned. X. In general, if a priest with a somewhat careless conscience comes to confession, do not fail to ask him about three things: 1. Whether he has postponed the celebration of Mass for a month, especially if they are Masses for the dead (see appendix 3, no. 107). 2. Whether he celebrated hastily, because to offer a Mass for the dead within the space of a quarter of an hour, even if it were a Mass for the dead or a votive Mass for the B. Virgin, would not excuse him from mortal sin (see treatise 15, nos. 84 to 86), because in such a short time, he will inevitably fail in many ceremonies, or at least in the gravity that the veneration of so great a sacrifice demands. 3. Whether he has fulfilled the obligation of the divine office, especially if he is a beneficiary. However, do not fail to advise him to make himself available, according to his capacity, to promote the salvation of souls. And if there is a serious shortage of confessors in his region, he can even obligate him to make himself suitable for such a service, as stated in treatise 16, nos. 126 and 127. Also, with warmth, suggest that he prepare himself for the sacrifice and offer due thanks after the celebration. As for mental prayer, without which it is difficult to be a good priest, see what is said in § 3, at the beginning. XI. When it is a question of the restitution of another's property, the penitent is not absolved unless he first restores it (if he can); because, having received absolution, it will be difficult for him to do so. However, note that many are excused from restitution due to prescription in good faith. Regarding this, it should be noted that: 1. Movable property is prescribed by a period of three years when a title is presumed, and immovable property is prescribed in 10 years in the presence of the owner, and in 20 years when the owner is absent. 2. It is probable that this prescription is valid also in foro conscientiae, even where the law of prescription does not apply in the external forum, as is the case in our kingdom, due to the difficulty in proving good faith. However, those prescriptions that are expressly prohibited by any municipal

law are excepted, e.g., in our kingdom, the prescription of inheritance is disapproved when the testator possessed it in bad faith. See the doctrines noted in treatise 10, nos. 10 to 14. XII. If the penitent has committed an offense for which the offended party is being prosecuted in court, do not absolve him (speaking generally) unless he makes amends to the enemy. See treatise 4, no. 17. XIII. If the confessor foresees that admonition will not be of any benefit, not even within a certain time, and the penitent appears to be in good faith, the confessor should omit it. See treatise 16, no. 108 and following, especially if it concerns a marriage that is null. Otherwise, it will be the cause of many sins that the penitent will easily commit if he is established in bad faith, having succumbed to the temptation to sin at the first opportunity, if he cannot easily separate himself from his supposed wife. In that case, if he is established in bad faith, he can write to the Holy Penitentiary for a dispensation, according to the formula indicated in treatise 18, no. 88, and tell the penitent to return after so many days to confess. But if the sin were to involve a common spiritual detriment, then...

[*Latin ed. p. 807*]

ADMONITIONS TO CONFESSORS. 795. The confessor ought to admonish the penitent, even if he believes the penitent to be acting in good faith, as stated in treatise 16, paragraph 116. Furthermore, the obligation to denounce confessors who are soliciting in a scandalous manner is excepted, because it is the duty of confessors to impose such an obligation, even if they foresee that the penitent will not fulfill it, as stated in treatise 16, paragraph 178. XIV. It is pertinent here to note that, although the confessor is not obligated, nor is it prudent for him to involve himself in such denunciations, nevertheless, in a certain rare case, he may be held to undertake such matters, when it is a question of safeguarding the common good of religion, or of the community. In such a case, he may request the bishop to grant him the power to receive such a denunciation; and he will then receive it in the following manner (it is necessary to know the method to be followed). And the following should be noted: 1. The name of the person making the solicitation; 2. The time at which it occurred; 3. The place, namely the church and the confessional where it took place; 4. The circumstances of the person making the solicitation, namely age, stature, hair, etc. He must also warn the penitent that if he were to falsely accuse a priest of such a crime, he would incur a reserved case for the Pope, as is stated in the bull *Sacramentum*, by Benedict XIV, as mentioned in treatise 16, paragraph 129. Furthermore, he should bind him under oath not to communicate the aforementioned denunciation to anyone. Finally, he should point out that only those words and actions of the person soliciting which can be manifested to the bishop should be mentioned, and not the guilt, if any, which the penitent has committed. XV. It should not be difficult to receive general confessions from those who wish to confess in this manner, even if there

is no necessity for it. St. Charles Borromeo said that general confessions are very beneficial for the persevering renewal of life. But if there is a large crowd of people, he should take care to postpone it to a more opportune time; if he never has time, and his duties are not impeded, as happens in missions, he should at least briefly receive the general confession (if it is not necessary), simply by inquiring about the nature and time of the sins committed, without delving into the number and particular circumstances. XVI. He must not fail to prepare each person for the act of contrition, suggesting to him the motives for both attrition and contrition, as stated in treatise 16, paragraph 117. For the acts of contrition which are elicited without motives are of little or no value. But when the confessor can rightly presume that the penitent has elicited the act of contrition, as he ought to, then it will be sufficient to tell him before absolution to renew his sorrow. And he must especially note that if the penitent approaches unprepared, he must, as far as he can, try to prepare him for absolution; see ibid., paragraph 105, and treatise 4, paragraph 3. XVII. He should not absolve those penitents who confess only venial sins, but habitual ones, unless he has ascertained that they truly repent and have a true purpose of amendment, at least with regard to some of them; or unless they exhibit, for a certain matter, some graver sin from their past life, as noted in treatise 16, number 23. How many invalid confessions (which are in themselves true sacrileges) are committed daily because of the negligence of confessors! XVIII. He should impose only those penances which he judges the penitent to be able to easily fulfill, as stated in treatise 16, paragraph 51. But he should take care that they are medicinal, such as frequenting the sacraments, making visits, commending oneself to God in the morning and evening, reading a spiritual book, joining a congregation, etc.

[*Latin ed. p. 808*]

796 APPENDIX IV. ADMONITIONS TO CONFESSORS, etc. XIX. To those who are spiritually minded and frequent the sacraments, it should be diligently suggested that they make use of mental prayer, and then inquire about it, at least by asking them whether they have ever omitted it. With moderate diligence, any confessor can sanctify many souls. Nor should it be difficult to grant frequent Communion, whenever he knows, or prudently judges, that the penitent will derive benefit from it. See appendix 1, no. 30. XX. To those who are most scrupulous, he should strongly urge obedience, and he should always assure them that by obeying, they are following a safe path, and that by disobeying, they are exposing themselves to danger. He should be firm and resolute in ensuring that they obey him; he should always use consistent language with them, because if he speaks to them in a wavering manner, he will only confuse them further. He should present general rules for resolving doubts, according to the disposition of each person: for example, to someone who is troubled about past confessions,

he should order, under obedience, that they not confess, unless they are certain that the sins they are confessing are mortal sins that they have never confessed before. And in this, the confessor should be firm and should not listen to him unless he obeys; because if he sometimes gives in and listens to him, the penitent will always be disturbed in their mind: some confessors ruin souls by listening to them. But to those who fear that any action of theirs may be a sin, he should urge them to overcome their scruples and to act freely when they do not perceive a certain sin; see treatise 1, no. 8. XXI. When it comes to choosing opinions, especially when it is a matter of removing the penitent from the danger of a formal sin, the confessor should often follow the more lenient opinion, as far as Christian prudence suggests. But when a particular opinion more closely leads to the danger of a formal sin, then he should certainly urge the stricter opinion; see treatise last, no. 3. I say "urge," because when an opinion is truly probable, and the penitent wishes to follow it, he cannot deny them absolution, because of the certain right that they have acquired through their confession of their sins, as stated in treatise 16, no. 119. XXII. In hearing the confessions of women, and in dealing with them, he should use greater severity than he can, as prudence suggests; therefore, he should refuse gifts; he should avoid familiarity, and anything that could be a cause of attachment. For by neglecting this, how many confessors have led their own souls and those of the penitents to ruin! See treatise last, nos. 54 and 55. XXIII. He should be humble, and should not boast about his own knowledge; therefore, he should often offer prayers to God, that through the merits of Jesus Christ, light may be imparted to him from heaven, especially in doubtful cases. "I called, and a spirit of wisdom came to me." Wisdom 7:7. Therefore, the confessor who does not devote himself to prayer will find it difficult to proceed correctly; and in more complex or more important matters, he should not fail to consult other learned men and those with more experience. He should especially do this when guiding a particular soul that is elevated and to whom God has shown favor through supernatural graces, when he himself is somewhat inexperienced in such matters. Some who have barely touched upon the knowledge of mystical theology are ashamed to consult others; this is not how truly humble people act; these people not only consult others, and often consult many when it is necessary, but they are also not affected by jealousy when it is a matter of allowing such souls to be guided by more experienced teachers, or at least to listen to their judgment. However, the confessor should not listen to these souls on a feast day; on feast days, he should give way to those who are more in need, especially those who are engaged in labor and those who are married.

[*Latin ed. p. 809*]

ADMONITIONS TO PARISH PRIESTS. 797 § II. Admonitions to Parish

Priests. It is fitting here briefly to note certain duties incumbent upon parish priests concerning the care of their flock. I. The parish priest is bound to instruct them in the mysteries of the faith and in matters necessary for salvation, such as: 1. The four principal mysteries, namely, that there is one God, and that He is almighty, most wise, the Creator and Lord of all, merciful and loving above all things; especially that He is a just rewarder of the good and the wicked; also, he ought to teach the mystery of the Most Holy Trinity, the Incarnation, and the Death of Jesus Christ. 2. The sacraments necessary, namely, Baptism, the Eucharist, and Penance; the others at least should be administered when they are to be received. 3. The articles of the Creed, and among these especially the perpetual virginity of the Blessed Virgin Mary, the session of Jesus Christ at the right hand of the Father, namely, that He is in Heaven in equal glory with the Father; the resurrection of the body at the final judgment which will be made by Jesus Christ; the unity of the Roman Church in which alone salvation is found, and then the eternity of paradise and hell. All these things every faithful person is bound to know under a grave precept. 4. The precepts of the Decalogue and of the Church. 5. The Our Father and the Hail, Mary, and the acts of faith, hope, love, and contrition. Therefore, just as greatly it is sinful for one to neglect to know these things (and indeed, not only the text of the words, but also in so far as the meaning is concerned), so also greatly does it sin the parish priest, as the Doctors commonly say, if, either by himself, or by another suitable person (when the latter is legitimately hindered, as says the Council of Trent, Session 5, chapter 2), he neglects to teach these things at least in substance to his subjects, or to children and adults who are ignorant of them. Hence, it follows that when he observes that parents or masters do not send their children or servants to instruction, he is bound to take measures with the bishop, who, as says the Council of Trent, Session 24, chapter 4, can even compel parents to do so by ecclesiastical censures. Parish priests should keep a record of the children under their care, so that they may see who are absent. Indeed, Croix (book 2, no. 174, and book 3, part 1, no. 767) says that if there are present those who are ignorant and who cannot attend church because they must guard their homes or flocks, since these are in grave spiritual need, the parish priest ought privately to seek them out, so that, whatever the inconvenience, as the author says, he may instruct them. At the very least, we say, when this is very difficult for him, because of the multitude of such ignorant people, he should at least take care to examine and instruct them at the time of the Paschal precept, or when they come to ask for confirmations, or to contract marriage. It is also fitting that the parish priest should inquire about the teachers and mistresses, so that they may be able to teach the children and girls the doctrine and the means of living in the fear of God. II. The parish priest is bound by himself to administer the sacraments whenever his subjects justly request it. And if he has a curate,

he must carefully examine the curate's life and knowledge; otherwise, he will be accountable to God for the disturbances that may occur afterwards. He is also bound to assist the dying, if another suitable person is not found, and he must give special attention to assisting dying sinners; for they are in grave need of his particular assistance. And concerning the Extreme Unction, let him note what the Roman Catechism says (part 2, no. 18): "Those greatly sin who" neglect to administer that unction to the sick at that time, when they have already lost all hope of salvation, and are beginning to lack life and senses." The parish priest is also bound to make sure that his subjects have satisfied the Paschal precept. Barb. de Offic. paroch. c. 2, no. 7, and Segneri, Paroch. instr. cap. 23. And let him be careful not to give communion certificates to any cleric.

[*Latin ed. p. 810*]

798 APPENDIX IV. ADMONITIONS TO PARISH PRIESTS. III. He must prevent the clerical habit from being conferred upon those young men or boys who do not show a disposition towards an ecclesiastical life in their morals. He must diligently instruct his clergy who wear the clerical habit, so that they may advance to the ecclesiastical state; otherwise, if they are educated without discipline, they will be found to be unruly, and whether by lawful means or by unlawful means, they will be promoted to the orders, and will become a scandal to the place. I omit to speak of the grave account which parish priests will have to render to God, who administer ordination, to those whom they know to be unworthy of the orders, or who exhibit such unworthiness before they have diligently investigated their probity. IV. The parish priest is bound to inquire about those who live in sin, so that they may be corrected. Also, about the scandals and offenses that are spreading, especially among betrothed couples, so that he may, as far as possible, address them appropriately. St. Thomas (2. 2. q. 15. a. 5.) says: "He who has a special care for another, ought to inquire about him, so that he may correct him from sin." But when he observes some scandal from someone of influence (especially if he is a priest), to whom he himself cannot have access, he must at least report the matter to the bishop, so that he may provide counsel. And he must not neglect this for any reason or out of fear; a good shepherd is bound to risk his life for the salvation of his flock. V. He must take care not to hear the confessions of betrothed couples for a long time before the marriage, because once the betrothal has begun, the entire time that elapses between the betrothal and the marriage will be a time in which both the betrothed and their parents will persevere in sin. VI. When disturbances are heard in the region, which the parish priest cannot address, he must try to have a mission brought in, unless something else is found to be more suitable to help them. And it is always advisable to invite external confessors for the souls who are ashamed: especially if a Lenten preacher does not usually come to his town. But the parish priest

who rejects missions gives rise to a suspicion of not being of great integrity. VII. The parish priest must not only avert evil, but also promote good, as good shepherds do, who do not cease to encourage frequent attendance at the sacraments and congregations, at visits to the Blessed Sacrament and the Divine Mother, at novenas, and at the veneration of the Blessed Sacrament when it is carried about. VIII. He must often encourage the people to pursue a special devotion to the Blessed Virgin Mary, by pointing out how great is her power and mercy towards her devoted followers. Therefore, he should encourage them to recite the Rosary in common with their families daily, to fast on Saturdays, and to celebrate the novenas of the seven feasts, which he will announce to the people from the altar whenever a novena occurs. It will also be beneficial for him to give a short talk on Saturdays, relating some example of the most blessed Virgin, and once a year to celebrate a more solemn novena with a sermon and exposition of the Blessed Sacrament; and he can, among others, use the book which I have published, entitled: "Glorie di Maria," in which he will find a wealth of material and examples. Happy is that parish priest who keeps his flock fervent in their devotion to Mary! For, with the Virgin's help, they will live righteously, and he himself will have a powerful advocate at the end of his life. See treatise 7, n. 43, where we have spoken of what he ought rather to persuade his people to do.

[*Latin ed. p. 811*]

A BRIEF PRACTICE OF MENTAL PRAYER. 799 It is most important to encourage the practice of petition; namely, that they frequently commend themselves to God, especially asking for perseverance in holiness through the love of Jesus and Mary; that they often explain that divine grace, and especially the gift of perseverance, are not obtained unless they are requested: "Hitherto, you have not asked any thing in my name. Ask, and you shall receive." And they should frequently proclaim that great promise of Jesus Christ, that whatever we ask the Father in His name, the Father will give us to Him: "Amen, amen, I say unto you, if you ask anything of the Father in My name, He will give it to you." John 16:23. They should also earnestly encourage the practice of mental prayer, and ensure that it is performed in church along with the people each day, or at least on each feast day, also teaching how it can be done at home. Therefore, the following instruction is added here, where a discussion is made of the necessity, and then of the practical method of mental prayer. § III. A Brief Practice of Mental Prayer. Before discussing the practice and method of mental prayer, it is helpful to say something about the necessity of understanding mental prayer. There are two aspects to this necessity. The first is what St. Augustine points out, namely, that for one who is advancing, it is impossible to see the way and the means to his salvation with closed eyes. Eternal truths are supernatural matters that cannot be seen with bodily eyes, but can be attained with the

eyes of the mind, that is, through thought and consideration. Therefore, he who does not engage in mental prayer, does not consider, and consequently does not see how important the matter of his eternal salvation is, nor does he foresee the path that must be followed to reach it. This is what St. Bernard wrote to Pope Eugene: "I fear for you, Eugene, that the multitude of affairs, with prayer and consideration neglected, may lead you to a hardened heart, which will not be horrified, because it does not feel." (Lib. 1. Consid. ad Eug. Pont.) In order for one to care for his eternal salvation, he must have a flexible or docile heart, and be prepared to receive and carry out divine inspirations. This is what Solomon asked of God: "Give therefore to Thy servant an understanding heart, to judge Thy people, and discern between good and evil. For who shall be able to judge this people, Thy people, which is so numerous?" 3 Kings 3:9. St. John says that those souls are of God, which strive to hear and carry out divine words: "And all shall be drawn to Me." John 6:45. Our heart is hard in itself, because it is entirely inclined to follow the pleasures of the flesh, and is a spirit that resists the law. But it is made flexible by the influx of grace, which is infused into it through prayer: there the soul is moved to consider the divine goodness and the singular love of God for it; it is inflamed, softened, and made obedient to divine calls, as David experienced when he said: "My heart grew hot within me." Psalm 38:4. Otherwise, the hard, resistant, and disobedient heart will remain, and in the final day it will fare badly: "A hard heart shall fear evil at the last: and he that loveth danger shall perish in it." Ecclesiasticus 3:27. Persisting in its hardness, it will suffer misfortune, which it will not even know is such: for, as St. Bernard says, "a heart that does not meditate will not be horrified, because it does not feel." For it does not perceive its defects and the obstacles that it places in the way of its salvation. And it should be noted that St. Bernard was writing to the Pope, who, although he did not neglect prayer (if perhaps he sometimes interrupted it) because of worldly affairs, but because of affairs that concerned all the matters of the Church and the glory of God. It is especially important that priests...

[*Latin ed. p. 812*]

800 APPENDIX IV. ADMONITIONS TO PAROCHIAL PRIESTS. Those burdened with greater responsibilities require greater assistance from divine graces, and consequently, they must pray, so that they may gain strength to sustain those burdens; and not only those who neglect prayer in order to engage in worldly affairs, but also those who are drawn away from it in order to promote spiritual works for the benefit of others, such as hearing confessions, preaching, or writing. This is illustrated by what Saint Teresa wrote (Letter 8) to the Bishop of Uxa, who, although zealous for the salvation of his flock, did not devote much time to prayer. Therefore, the Saint, illuminated by a special and heavenly light, or even through

revelation, knowing this deficiency in the prelate, and although he was her confessor, had no difficulty in admonishing him, and wrote to him, translating her words into Latin: "When I offered to our Lord the thanks I owed Him for granting me humility, charity, and zeal, I asked Him to grant you all the virtues; but I found that you lacked nothing except what is most important, and without which all else fails and crumbles." She therefore wrote, "What is lacking in you is prayer and perseverance in prayer, with constancy, which breaks the bond of union, namely, the unction of the Holy Spirit; from whose absence all aridity and the disquiet of the soul arise." And afterwards, she adds: "Although no imperfections may seem to be in us, when God opens the eyes of the soul, as He is wont to do in prayer, these imperfections are clearly seen." And this is what the Holy Spirit declared, namely, that from a lack of meditation, the world is filled with sinners, and hell is filled with souls every day. "They have laid it waste, and it hath mourned for me. With desolation is all the land made desolate; because there is none that considereth in the heart." Jer. 12:11. Another principal foundation, and of greater importance for the necessity of mental prayer, is that souls who do not meditate do not pray, and therefore perish. Even if virtues are found in one who does not devote himself to prayer, they will nevertheless be neither stable nor persevering, because perseverance is not attained without prayer, and indeed, without persevering prayer. Hence, he who does not pray perseveringly, will not persevere. Therefore, Saint Paul exhorted his disciples to pray without ceasing: "Pray without ceasing." 1 Thessalonians 5:17. And the Savior Himself said that one must never cease from prayer: "And he spoke also a parable to them, that we ought always to pray and not to faint,." Luke 18:1. And from this it follows that meditation is morally necessary for souls, so that they may remain in God's grace. I say morally necessary, because, in itself, one might persevere in grace acquired without meditation; nevertheless, when one does not meditate, it is morally impossible, that is, extremely difficult, not to fall into grave sins; and the reason is that one who does not devote himself to prayer, but distracts his soul with other things, will perceive his needs little, will be less concerned about his dangers, will care little about the means to be taken to avoid them, and will finally, not recognize the necessity of prayer, in which he would find salvation; and by ceasing to pray, he will certainly perish. That great bishop, Palafox, in the notes to the aforementioned letter of Saint Teresa, whom he calls the most spiritual of the saints (n. 10), writes: "From this we must learn that zeal and charity are not enough for prelates without prayer, because the virtues that are not strengthened by prayer fail, and we perish."

[*Latin ed. p. 813*]

A SHORT PRACTICE OF MENTAL PRAYER. 801. We must persevere.

The reason is clear: how can charity endure if God does not grant us perseverance? How will the Lord grant us perseverance if we do not ask for it from Him? How can we ask for it without prayer? How can this miracle (namely, obtaining perseverance) occur without the channel of heavenly influences flowing into our souls, namely, prayer? Without prayer, there is no communication with God, and therefore the virtues cannot be preserved; there is no other means, no other remedy, by which we can obtain good things from God.

The Lord warns us that whoever meditates on eternal truths, namely, death, judgment, and the two eternities that await us, will keep himself safe from sin: "Remember thy last end, and thou shalt not sin." Ecclesiasticus 7:40. David said that meditating on eternity spurred him to practice virtue and purify his spirit: "I thought upon the days of old... and I was exercised, and I searched out my spirit." Psalm 76:6, 7. And a certain author said that if the damned were asked why they are found in hell, the majority of them would answer: "We are found in hell because we did not think of hell." It is impossible for anyone who is reminded of eternal truths in spiritual exercises not to turn to God, if he listens to them attentively and believes them. Saint Vincent de Paul used to say that if a sinner were sincerely present at missions or spiritual exercises, and did not convert, it would be a miracle; and yet, the one who preaches and speaks in these exercises is only a man, while in mental prayer, it is God Himself who speaks to the soul: "I will lead her into the desert, and I will speak to her heart." Hosea 2:14. God, of course, will speak more wisely than any preacher. All the saints became saints through meditation. And we learn from experience that those who persevere in prayer, even with difficulty, do not fall into mortal sin, and if they do happen to fall, they are quickly restored by persevering in prayer, and they return to God. Mental prayer and sin cannot coexist. A certain servant of God said that many recite the Rosary, the Office of the Virgin, and fast, yet they remain in sin. But whoever perseveres in prayer, it is impossible for him to remain in God's enmity; either he abandons prayer, or he will turn away from sin. But if he does not abandon prayer, he will not only be turned away from sin, but he will also be detached from the love of creatures, and he will give his love to God: "My heart grew hot within me." Psalm 38:4. Prayer is a furnace in which the flames of divine love are kindled in the soul. It is impossible to consider the divine goodness, the merit that God has to be loved, the love with which He loves and loves us, and not to set the soul on fire with love for God. The royal prophet himself said that when he thought of God and meditated on the great works of His charity towards men, he felt himself completely inflamed with love for Him, and his spirit failed when he was unable to receive the abundant consolations that the Lord then communicated to him: "I remembered the works of the Lord." Psalm 76:12. But let us descend to practice. Speaking of the place most suitable for prayer, the church is more convenient, but

those who cannot go to it, or cannot stay there, can, in any place, at home, in the countryside, even while walking, even while working, with their mind raised to God, dedicate themselves to prayer: many peasants, for example, cannot do otherwise.

[*Latin ed. p. 814*]

802 APPENDIX IV. ADMONITIONS TO CONFESSORS, etc. How diligently they should pray and act on their journey! He who seeks God finds Him everywhere and at all times. As for time, the morning hour is preferable. The actions of the day will not proceed well if morning prayer has been neglected. Prayer should certainly be offered twice a day, namely in the morning and in the evening; but if time is lacking in the evening, let it be offered at least in the morning. The Most Reverend Father Charles Caraffa, founder of the Congregation of the Most Holy Helpers, said that one act of love, offered with fervor in the morning prayer, will be powerful to keep the soul inflamed throughout the entire day. As for the length of time the prayer should last, the parish priest or confessor should guide himself according to his prudence. It is certain that to reach a certain degree of perfection, the space of the middle hour is not sufficient. However, this time will be sufficient for beginners, but they should be strongly encouraged not to omit prayer, especially during times of temptation. See the statements in Appendix 1, no. 5. Finally, let us come to the method of teaching prayer. It consists of three parts: preparation, meditation, and conclusion. In preparation, three acts are included: faith, namely, in the presence of God; humility, and petition that the soul may be enlightened. These are said as follows: 1. My God, I believe that You are present with me, and I adore You because of the depths of my unworthiness. 2. My Lord, because of my sins, I deserve to be suffering in hell; I repent of having offended You, spare me for the sake of Your mercy. 3. Eternal Father, through Jesus and Mary, grant me light in this prayer, so that I may perceive progress in my soul. Then, the "Hail Mary" is said to Mary, Most Holy, so that she may obtain this light for oneself, and the "Glory be to the Father" is said to Saint Joseph, to the guardian angel, and to the saints who are advocates. These acts should be performed attentively, but briefly, and then proceed immediately to meditation. For meditation, it is helpful for one, especially if he knows how to read, to use a book, stopping where the mind feels a greater movement. Saint Francis de Sales said that this should be done as bees do, which settle on a flower until they extract the honey, and then move on to another. But if one does not know how to read, he should meditate on the most recent benefits of God, and especially on the life and passion of Jesus Christ: meditation on the passion (Saint Francis de Sales said) should be our ordinary practice. Oh, what a beautiful book is the passion of Jesus for devout souls! There, the malice of sin and God's love for men are perceived better than in any other book. Once, an image of the

Redeemer spoke to the Reverend Father Bernard of Corlione, who asked it whether it would please him if he were to learn to read? The image replied: "What do you need with reading? What do you need with books? I am your book; this is enough for you." It should be noted that the progress of mental prayer does not consist only or even primarily in meditation, but in eliciting affections, petitioning, and deliberating; these are the three fruits of meditation, as we indicated in Appendix 1, no. 3. Therefore, after one has meditated on some great and eternal truth, and after his heart has been spoken to by God, it is necessary for him to speak to God through affections, or acts of faith, thanksgiving, adoration, humility, and especially love and contrition, which are also acts of love. Love is that golden bond which unites the soul with God. Charity is the bond of perfection. Every act of love is a treasure which makes us certain of our participation in divine friendship: "For she is an infinite treasure to men," by those who have used her, are made partakers of the friendship of God. Wisdom 7:14. I love those who love me. Proverbs 8:17. "He who loves me," will be loved by my Father, John 14:21. "Charity covers a multitude of sins."

[*Latin ed. p. 815*]

A BRIEF PRACTICE OF MENTAL PRAYER. 803 "For all who desire to live a godly life in Christ Jesus will be persecuted." 1 Peter 4:8. See the remarks in the Moral Work, book 6, chapter 442. The Venerable Sister Mary, while contemplating the Crucifix, saw a large flame into which some straw was thrown, and it immediately caught fire; from this, she understood that every act of love by which the soul is drawn to God, cleanses and destroys all sins committed. Furthermore, St. Thomas teaches that every act of love makes us advance one step towards eternal glory: every act of charity merits eternal life. Acts of love are, for example, to say: "My God, I place you above all else. I love you with all my heart." Or, to surrender oneself entirely to the divine will, saying: "Lord, do with me whatever you will," knowing what pleases you, because I am ready for all things." Or, to offer oneself entirely to God, saying: "Behold me, do with me and with all that is mine whatever you please." And especially these offerings are acts of love that are most pleasing to God: therefore, St. Teresa offered herself to God fifty times daily. The most perfect act of love is to rejoice and be pleased with the infinite happiness of God. When the soul feels united with God, through supernatural or infused recollection (as explained in Appendix 1, number 13), it need not strive to elicit other acts, except those to which it feels gently drawn by God; it should then pay attention with loving devotion; it should attend to what God is working in it, for otherwise it might hinder the divine operation. It should also be noted, as St. Francis de Sales pointed out, that if, before meditation, some good feeling is inspired by the Holy Spirit, then the consideration should be omitted, and place should be given to the feelings, since consideration only serves to stir up feelings, and once

that goal is achieved, the consideration should be omitted. 2. It is very helpful in prayer to repeat petitions with humility and confidence, asking God for light, forgiveness of sins, perseverance, a good death, and above all, the gift of His divine love. St. Francis de Sales urged that, among other things, the grace of divine love should be requested with very fervent zeal, because (he said) once we have obtained love, we obtain all other graces: this is the sum total. If, however, the soul finds itself in a state of desolation in which it feels it can do nothing else, it will suffice to repeat David's petition: "O Lord, hear my prayer. O Lord, help me. Succor me, for I am in distress." The Venerable Father Paul Segneri, from his own experience, had learned that there is no exercise in meditation more useful for souls than to repeatedly ask for graces. And it is necessary to ask in the name, or through the merits, of Jesus Christ, who has clearly promised us, as mentioned above: "Amen, amen, I say unto you, if you ask the Father anything in my name, he will give it to you." John 16:23. 3. It is necessary that in prayer (at least at the end of it), one set oneself a purpose, not only in general, to avoid all deliberate sins, even the slightest, and to surrender oneself entirely to God, but also in particular, for example, to be more careful to avoid a certain fault into which one frequently falls; or to practice a certain virtue in a better way than before, for example, to be more patient with a certain person, to obey a certain superior more diligently, or to observe a certain rule, or to mortify oneself more diligently in a certain matter. We should not leave prayer until we have deliberated on a particular purpose. Finally, the conclusion of prayer consists of three acts: 1. Thanks should be given to God.

[*Latin ed. p. 816*]

804 PROPOSITIONS CONDEMNED. 1. One must not have inspirations in meditation; 2. One must diligently observe the deliberations made; 3. One must ask the eternal Father, for the sake of Jesus and Mary, for help so that the faithful may be preserved; and one must conclude by commending the souls in Purgatory, the prelates of the Church, sinners, and all our relatives, friends, and benefactors, by reciting the Our Father and the Hail Mary, which are the most useful prayers, which we have been taught by Jesus Christ and the Holy Church. However, when we depart from prayer, 1. as Saint Francis de Sales says, we must gather a bouquet of flowers, so that we may enjoy its fragrance daily, that is, one or two points on which the soul was more moved, so that in the course of the day we may remember them. 2. We must take care to put into practice immediately the deliberations made, in both small and large matters that occur to us, for example, the deliberation to suffer with gentleness someone who is angry with us: or to mortify ourselves in sight, hearing, speech, etc., and especially with silence, as much as possible, we must preserve the sense of the affections; otherwise, we will be distracted immediately into useless actions and

conversations, and that fervor of devotion which was conceived in prayer will immediately vanish. Above all, the director must constantly exhort his penitents not to omit prayer, nor to diminish the time devoted to it, and never to be discouraged, even if they seem to be oppressed for a long or considerable time. "How many courtiers," says Saint Francis de Sales, "go to see the prince, and are content simply to be seen by him!" We go to prayer with the intention of pleasing God; if He wishes to speak to us and favor us with His consolations, we should give Him thanks for such great graces; but if not, we should be content to be present before His divine presence with peace, adoring Him and presenting our needs to Him; and then, if the Lord does not speak to us, surely our obedience and fidelity will be pleasing to Him, and He will certainly hear our prayers because of our trust. PROPOSITIONS CONDEMNED BY POPE ALEXANDER VII. On Thursday, September 24, 1665, in the general congregation of the Holy Roman and Universal Inquisition, before His Holiness Pope Alexander VII, after mature discussion of the following propositions: 1. No one is ever obligated at any time in his life to perform an act of faith, hope, and charity by virtue of the precepts of divine law pertaining to those virtues. 2. A soldier may accept a challenge to a duel, lest he appear cowardly before others. 3. The opinion asserting that the Bull of the Holy Supper only prohibits absolution from heresy and other public crimes, and that it does not detract from the authority of Trent, in which the matter of hidden crimes is discussed, was condemned in the year 1629.

[*Latin ed. p. 817*]

By ALEXANDER, Pope VII, on July 18, 805, in a consistory of the Most Eminent Cardinals, the following was examined and approved:

4. Regular prelates can, in the forum of conscience, absolve any secular individuals from hidden heresy and from excommunication incurred because of it.

5. Although it is clearly known to you that Peter is a heretic, you are not obligated to denounce him, if you cannot prove it.

6. A confessor, who in sacramental confession gives to the penitent a paper to be read later, in which he incites to lust, is not considered to have been solicitous in confession, and therefore is not to be denounced.

7. The way to avoid the obligation to denounce solicitation is if the one who is solicited confesses with the one who is soliciting; in this case, he can absolve the person without the burden of denouncing.

8. A priest can lawfully receive a double stipend for the same Mass; applying to the petitioner the most special part of the fruit, corresponding to the one who celebrates the Mass itself, and this after the decree of Urban VIII.

9. After the decree of Urban, the priest to whom the Masses are entrusted

can fulfill the obligation through another, being given a smaller stipend, retaining the other part of the stipend for himself.

10. It is not contrary to justice to receive a stipend for multiple sacrifices and to offer only one sacrifice; nor is it contrary to fidelity, even if one promises, even with a vow confirmed by an oath, to give a stipend for no other offering.

11. Sins omitted or forgotten in confession, either due to the urgent danger of life or for another reason, are not to be confessed in the subsequent confession from the first.

12. Mendicants can absolve from cases reserved to the bishop, without having obtained from the bishop the faculty to do so.

13. He fulfills the precept of annual confession who confesses to a regular, presented to the bishop, but unjustly rejected by him.

14. He who makes a voluntary confession that is null, fulfills the precept of the Church.

15. The penitent can, by his own authority, substitute another who will fulfill the penance in his place.

16. Those who hold a benefice *curatus* can choose a simple priest as their confessor who is not approved by the ordinary.

17. It is licit for a religious or cleric to kill the calumniator who threatens him with grave crimes, or threatens his religion, when no other means of defense is available, as would seem to be the case if the calumniator is prepared to publicly and before the most serious men, attack either the religious himself, or his religion, unless he is killed.

18. It is licit to kill a false accuser, false witnesses, and even a judge, from whom an unjust sentence is imminent, if no other way can prevent the innocent from suffering harm.

19. The husband does not sin if he kills his wife, by his own authority, after catching her in adultery.

20. The restitution imposed by Pius V on those who do not recite the Divine Office is not due in conscience before the judge declares a sentence, because it is a penalty.

21. He who holds a collated chaplaincy, or any other ecclesiastical benefice, and who devotes himself to the study of literature, fulfills his obligation if he has the office recited by another.

[*Latin ed. p. 818*]

806 PROPOSITIONS DAMNED

22. It is not against justice to not confer ecclesiastical benefices freely, because the one conferring these ecclesiastical benefices, with money involved, does not demand it for the conferral of the benefice, but rather as a

temporary emolument, which he was not obligated to grant.

23. He who breaks the fast of the Church, to which he is bound, does not sin mortally unless he does so out of contempt, or disobedience, for example, because he does not wish to subject himself to the precept.

24. Effeminacy, sodomy, and bestiality are sins of the same species, namely, grievous sins; therefore, it suffices in confession to say that one has procured pollution.

25. He who has had intercourse with a woman not his wife, fulfills the precept of confession by saying, "I committed a grave sin against chastity with a woman not my wife," without explaining the intercourse.

26. When those who are litigating have opinions equally probable on their side, the judge may accept money in order to render a judgment in favor of one rather than the other.

27. If a book is by a junior or modern author, the opinion should be considered probable, unless it is known to have been rejected by the Apostolic See as improbable.

28. The people do not sin, even if, without any cause, they do not accept a law promulgated by the prince.

After these things, while care and study were devoted to the examination of similar propositions, meanwhile, the aforementioned most holy [person], having maturely considered the matter, decided and decreed that the aforementioned propositions, and each one of them, should be condemned and prohibited as scandalous, and he condemns and prohibits them in such a way that whoever teaches them, either jointly or separately, defends them, or even discusses them, publicly or privately, except perhaps by refuting them, incurs excommunication by that very act, from which he cannot be absolved by anyone, whatever his dignity, except by the [current] Roman Pontiff, unless it is at the point of death. Furthermore, in virtue of holy obedience, and under the threat of divine judgment, he strictly prohibits all the faithful of Christ, of whatever condition, dignity, and status, even those of special and most special distinction, from putting the aforementioned opinions, or any of them, into practice.

On the 5th day of March, in the year 1666.

Prop. 29. On the day of fasting, he who frequently takes medicine does not break the fast.

30. All officials who corporally labor in the republic are excused from the obligation of fasting, and they do not need to certify whether their work is compatible with fasting.

31. All those who are traveling by riding are absolutely excused from the precept of fasting, no matter how they travel, even if the journey is not necessary, and even if the journey is completed in one day.

32. It is not evident that the custom of not eating eggs and dairy products

during Lent is obligatory.

33. The restitution of fruits due to the omission of hours can be supplied by any alms that the beneficiary has made from the fruits of his benefice.

[*Latin ed. p. 819*]

By INNOCENT XI, Pope, 807, 34. On Palm Sunday, reciting the Paschal Office fulfills the precept.

35. One Office can suffice to fulfill the double precept, for the present day and the following day.

36. Religious are permitted to make use of their privileges in the forum of conscience, which are expressly restored by the Council of Trent.

37. Indulgences granted to religious and revoked by Paul V, are today revalidated.

38. The mandate of Trent, concerning the priest who offers the sacrifice, that he should, out of necessity, confess his sins first, is a counsel, not a precept.

39. That particle, "first," is understood to mean that the priest will confess at his appointed time.

40. It is a probable opinion that a kiss given solely for carnal and sensible pleasure, from which there is no danger of further pollution, is only venial.

41. A concubinarius is not obligated to dismiss his concubine, if she were very useful for the pleasure of the concubinarius (commonly called a "regalo"), provided that, if she were to leave, he would find it very difficult to live, and other companions would cause him great boredom, and another servant would be very difficult to find.

42. It is permissible for a lender to demand something beyond the principal, if he obligates himself not to repeat the demand until a certain time.

43. An annual legacy left for the soul of the deceased does not last longer than ten years.

44. With regard to the forum of conscience, when a deliquent has been corrected, and his contumacy has ceased, the censures cease.

45. Prohibited books can be retained until they are purged, provided that due diligence is used to correct them.

PROPOSITIONS CONDEMNED BY THE MOST HOLY POPE INNOCENT XI, in Rome, on the 5th day of March, 1679.

1. It is not illicit in administering the Sacraments to follow a probable opinion concerning the value of the Sacrament, leaving aside a safer one, unless this is forbidden by law, a decree, or the danger of incurring a serious harm. Therefore, the opinion that is only probable should not be used in the administration of Baptism, Holy Orders (both priestly and episcopal).

2. I judge that it is probable that a judge can judge according to an opinion that is even less probable.

3. Generally, as long as one acts with probability, whether intrinsic or extrinsic, however slight, provided that one does not go beyond the limits of probability, one always acts prudently.

4. An infidel will be excused from infidelity if he does not believe, guided by a less probable opinion.

5. We do not dare to condemn that person who, in life, would perform an act of love of God only once.

[*Latin ed. p. 820*]

808 PROPOSITIONS THAT ARE DAMNABLE:

6. It is probable that the precept of charity towards God does not obligate strictly every five years.

7. It obligates only when we are held to be justified, and we have no other way in which we can be justified.

8. To eat and drink until satiety for the sole purpose of pleasure is not a sin, provided it does not harm one's health, because it is lawful for a natural appetite to enjoy its acts.

9. The exercise of marriage solely for pleasure is entirely free from mortal sin, and from venial fault.

10. We are not bound to love our neighbor internally and formally.

11. We can fulfill the precept of loving our neighbor through external acts alone.

12. Scarcely will you find, even in kings, a superfluous state; and therefore, scarcely is anyone bound to alms when he is bound only from a superfluous state.

13. If you do so with due moderation, you can, without mortal sin, be saddened by the life of someone, and rejoice at his natural death; you can ask for and desire it with an ineffective affection, not out of dislike for the person, but for some temporal advantage.

14. It is lawful to desire the death of one's father with a resolved desire, not as the evil of the father, but as the good of the one desiring; because to him will befall a rich inheritance.

15. It is lawful for a son to rejoice at the parricide of his parent committed by him while drunk, because of the immense wealth derived from the inheritance.

16. Faith is not considered to fall under a special precept, and by itself.

17. It is sufficient to elicit the act of faith once in life.

18. If someone is questioned by public authority, it is proper to confess one's faith frankly, so as to consult the glory of God and of the faith; to remain silent is, by itself, not damnable.

19. The will cannot effect that the assent of faith in oneself be more firm than it merits, according to the weight of the reasons that impel to assent.

20. Therefore, one can prudently reject the assent that one had in a supernatural manner.

21. The assent of supernatural faith, which is useful for salvation, stands with only a probable knowledge of revelation, indeed, with a fear that one may not have heard God.

22. Faith in one God seems necessary only by the necessity of the means, not by the explicit necessity of the reward.

23. Faith broadly speaking, from the testimony of creatures, or a similar motive, suffices for justification.

24. To call God as a witness to a lie is a slight irreverence, not so great that God would will or be able to condemn a man.

25. It is lawful to swear, even with a light cause, without the intention of swearing, whether the matter is light or grave.

26. If someone, whether alone or before others, whether questioned or spontaneously, or for the sake of recreation, or for any other purpose, swears that he has not done something that he truly did, understanding within himself something else that he did not do, or another way in which he did it, or any other addition of truth, he truly does not lie, nor is he perjurious.

[*Latin ed. p. 821*]

BY INNOCENT XI, POPE, 809, 27. The just cause for using such deceptive means is when it is necessary, or useful for the salvation of the body, the honor, the preservation of family affairs, or for any other virtuous act, so that the concealment of the truth is considered expedient and prudent at that time.

28. He who, through recommendation or favor, is promoted to a magistracy or public office, may, with a restricted intention, take the oath that is commonly required by the king's mandate from similar individuals, without regard to the intention of the one demanding it, because he is not bound to confess a hidden crime.

29. Grave and urgent danger is a just cause for feigning the administration of the sacraments.

30. It is permissible for an honorable man to kill an aggressor who intends to inflict calumny, if otherwise he cannot avoid this disgrace; the same may be said if someone attacks with a club or strikes with a staff, and after the blow with the club or the strike with the staff, flees.

31. It is permissible to kill a thief for the preservation of a single gold coin.

32. Not only is it licit to defend oneself with deadly force to protect what

one actually possesses, but also what one has a right to, and what one hopes to possess.

33. It is permissible for both the heir and the legatee, against one who unjustly prevents them from receiving the inheritance or the legacy, to defend themselves in such a way, as also for one who has a right to a chair or a benefice, against one who unjustly prevents them from possessing it.

34. It is permissible to procure an abortion before the animation of the fetus, so that a girl who is pregnant may not be killed or dishonored.

35. It seems probable that every fetus, as long as it is in the womb, lacks a rational soul, and that it only begins to have it when it is born, and consequently, it will be said that in no abortion is homicide committed.

36. It is permissible to steal, not only in extreme necessity, but also in grave necessity.

37. Servants and maids may secretly take from their masters to compensate for their labor, which they consider greater than the wages they receive.

38. No one is bound to restore what has been taken through a few thefts, however great the total sum may be, under penalty of mortal sin.

39. He who moves or induces another to inflict a serious injury on a third party is not bound to make restitution for that injury.

40. A Mohrat contract is licit even with respect to the same person, and with a previously initiated contract of sale with the intention of profit.

41. When money is counted as more valuable than it is, and no one makes present money more valuable than future money, the creditor may demand something more than the principal from the borrower, and may be excused from usury on this account.

42. Usury is not present when something is demanded beyond the principal, as a debt of benevolence and gratitude, but only when it is demanded as a debt of justice.

43. What harm is there if one diminishes a great authority to escape a false crime?

44. It is probable that one does not sin mortally who imputes a false crime.

[*Latin ed. p. 822*]

810. Propositions condemned by Pope Innocent XI, so that someone may defend his justice and honor. And if this is not probable, scarcely any opinion will be probable in theology.

45. To give something temporal for something spiritual is not simony, when the temporal thing is not given as a price, but solely as a motive for conferring or effecting the spiritual thing, or even when the temporal thing is merely a free compensation for the spiritual, or conversely.

46. And this also holds true, even if the temporal thing is the principal motive for giving the spiritual thing, indeed, even if it is the end of the very spiritual thing itself, so that it is valued more than the spiritual thing.

47. When the Council of Trent says that those who communicate with those who are guilty of mortal sins sin mortally, unless they judge them to be more worthy and more useful to the Church, the Council either intends to mean, by this, that those who are judged to be more worthy are, in comparison, positively worthy; or, secondly, it uses the word "worthy" in a less proper way, in order to exclude the unworthy, and not to mean the truly worthy; or, thirdly, it speaks in a way that is sometimes the case, when there is a conflict.

48. It seems clear that fornication, in itself, involves no malice, and is only evil because it is forbidden, so that it appears to be entirely contrary to reason.

49. Softness is not forbidden by natural law. Therefore, if God had not forbidden it, it would often be good, and sometimes even obligatory under pain of mortal sin.

50. Adultery is not committed when a person is joined to a spouse with the consent of the husband; therefore, it is sufficient in confession to say that one has committed fornication.

51. A servant who knowingly helps a woman to climb through the window to strip a virgin, and who repeatedly serves her in this way, by bringing a ladder, opening the door, or doing something similar, does not sin mortally, if he does so out of fear of a notable detriment, such as being mistreated by the master, being looked at with lewd eyes, or being expelled from the house.

52. The precept of observing the holy days does not obligate under pain of mortal sin, except for scandal, if there is no contempt.

53. One satisfies the precept of the Church regarding hearing the sacred services, by hearing two parts, indeed, four parts simultaneously, from different celebrants.

54. He who cannot recite Matins and Lauds, can satisfy the precept by reciting the other hours, and is not obliged to do so, because the greater part draws the lesser part to itself.

55. One satisfies the precept of annual Communion by sacrilegiously receiving the Lord.

56. Frequent confession and Communion, even in those who live according to the ways of the world, is a sign of predestination.

57. It is probable that honest contrition alone is sufficient.

58. We are not obliged to confess to the confessor the habit of any sin.

59. It is permissible to sacramentally absolve those who have confessed only half of their sins, due to the great number of penitents, as may happen,

for example, on a great feast day or during an indulgence.

60. To a penitent who has a habit of sinning against the law of God, nature, or the Church, and even if no hope of amendment appears, absolution is neither to be denied nor postponed, provided that he expresses, with his mouth, that he is sorry and intends to amend.

[*Latin ed. p. 823*]

TO THE READER. 811 61. Can a person be absolved who is in the very act of committing sin, which he can and does not want to avoid, nay, who actively and deliberately seeks it out, or allows himself to be drawn into it? 62. A proximate occasion of sin is not to be avoided when some useful or honorable reason for not avoiding it arises. 63. It is permissible to seek out a proximate occasion of sin directly for the sake of one's own spiritual or temporal good, or that of one's neighbor. 64. A person is capable of absolution, even if he suffers from ignorance of the mysteries of the faith, and even if, through culpable negligence, he is unaware of the mystery of the Most Holy Trinity and the Incarnation of our Lord Jesus Christ. 65. It is sufficient to have believed those mysteries once.

LIST OF QUESTIONS WHICH THE AUTHOR HAS REVISED.

These were revised, explained, and changed for the better in the ninth edition by the Most Reverend ALPHONSUS MARIA DE LIGORIO, Rector Major of the Congregation of the Most Holy Redeemer, and formerly Bishop of St. Agde of the Goths. After a review, the Holy Congregation of Rites declared that nothing worthy of censure had been found, by decree of May 14, 1803, confirmed by the Most Holy Pope Pius VII.

"There are also among us who have a fear of God, but not according to knowledge," establishing stricter precepts which human weakness cannot sustain. This fear seems to promote discipline, but it is misguided because it does not consider nature, nor does it assess the possibility [of compliance]. Therefore, let there not be an unreasonable fear. St. Ambrose, *In Ps. 118*, Sermon 5, verse 6.

"The conscience must be guarded against being too lax and too strict; for the former breeds presumption, the latter despair. The former often saves for condemnation, the latter condemns for salvation." St. Bonaventure, *Compendium Theologiae*, Book 3, Chapter 32, number 5.

TO THE READER.

Since the principal purpose of our Congregation of the Most Holy Redeemer is to dedicate itself to missions, and since the exercise of the missionaries necessarily involves the task of instructing and guiding the consciences of people through confessions, I conceived many years ago of giv-

ing a book on moral matters to the youth of our sodality, a book that would follow a middle course between others that are either too strict or too lenient. The work was begun, but because it was too hastily brought to the printers, in order to satisfy others, I did not satisfy myself; for many things either were not thoroughly examined or were presented in a confused order. Therefore, having realized that it required more careful examination and a clearer method, I devoted myself to a second edition, in which I endeavored to bring everything into a better order, and to make the book richer in useful teachings. I have also revised some opinions (as circumstances, with the passage of time, have led to a more useful truth), acknowledging my own human fallibility. I am not ashamed of this, since St. Augustine has not been ashamed to retract in many things; as Cajetan, Catherine, and Capreolus also testify, and the Angelic Doctor himself (3rd part, question 9, article 4) has said: "Quam-"

[*Latin ed. p. 824*]

812 TO THE READER. I may have written differently elsewhere. For as Tully said, "It is the mark of a wise man to change his opinion." And elsewhere, "No opinion has ever been praised that remained unchanged." It may seem superfluous to some, after so many books on moral theology, that I have undertaken this labor, as if I were doing something new; but I have read so many authors, and I have found some who, indulging those who, as Isaiah says (Is. 30:10), "Who say to the seers. Do not say to us, 'Turn aside to the right hand or to the left,'" speak to them of pleasant things; they scatter dust under their noses, so that they may miserably rest in their sins. It is not to be doubted that the Church of God suffers much harm from the followers of these authors, since a large part of the people, leading a laxer life, flock to them. On the other hand, I have found others who, accustomed to condemning everything, do not show wisdom in their extreme rigor, they confuse counsel with precepts, and they burden consciences with new commands, without considering human weakness, and without remembering that sacred canon (chap. last of the De Transactionibus) which says: "In those matters in which the law is not expressly found, proceed according to equity, always inclining towards the more humane side, according to what the persons and causes, places and times seem to require." And in this way, they make the yoke of Christ our Lord, which is sweet, intolerable, and thus prevent many from reaching the path of salvation, as St. Ambrose says: "There are also among us those who have the fear of the Lord, but not according to knowledge, establishing harsher precepts that human nature cannot endure." (Ps. 118, serm. 5). Both extremes are certainly very dangerous: for the first opens a wide path to perdition through relaxation; the other, as the learned Cabas says (in Theor. jur. Præf. ad Lect.), (1) drives souls to ruin by a double means, namely, erroneous conscience and despair; for many, having heard this

harsher doctrine, fall into mortal sin, either believing that there is a deadly sin where there is none, or, deterred by excessive difficulty, they think it is impossible to be saved in that way, and they completely abandon care for their salvation. Therefore, I have decided to publish this new work, which would occupy a middle ground between opinions that are too lenient and those that are too severe. It is easy to foresee that in this book of mine, and especially in this latest edition, I will not satisfy everyone: for those who are more attached to rigid or lenient opinions than is right, I will either be considered too severe, because I have departed from the opinions of many important authors; or too lenient, because I have approved as probable several opinions favorable to freedom. I testify to God, whose honor and the salvation of souls I have proposed to myself, that in everything I have written, I have not been led by any passion, nor have I been attached to the words of certain authors, nor have I adhered too much to severity or leniency, but I have been led to write these things. In each question, after long study, I have endeavored to investigate the truth, especially in those matters that have more to do with practice: and therefore, I have not only carefully examined the reasons given by the classical doctors; but I have also not neglected to consult many more recent doctors, so that sometimes I have spent many days in making a correct judgment on a particular question. Indeed, I have not followed the blind lead of writers, as a sheep (to use the words of the rigorists): but I have diligently applied myself (1) And in book 5, treatise 5, on the seventh commandment of the Decalogue, chapter 2, on Restitution, question 1, number 547, verse. Let us approach.

[*Latin ed. p. 825*]

TO THE READER. 813 I have endeavored to seek out the truth, or at least opinions that more closely approach it. To the best of my ability, I have always striven to give precedence to reason, and when reason has convicted me, I have not hesitated to contradict even the most esteemed authorities, even those to whom I might perhaps have adhered more readily, because, as I acquired this knowledge, they came into my hands after others. Therefore, dear reader, do not think that I am entirely devoted to authors of lenient opinions, if you observe me citing them frequently; for in completing this work, I have not neglected to read even the authors of stricter opinions, being ready to abandon my own views, provided that their reasons have convinced me of the truth. Moreover, in discussing doubtful matters, I have felt the same scruple in admitting as probable those opinions that favor freedom and are alien to reason, as in condemning those that seemed to me to be based on a certain valid foundation. For it is certain, or, as commonly taught by the Doctors, and as the learned R. P. Concina instructs me in his most erudite work on dogmatic-moral theology, that what is imposed upon men under a grave penalty is not so, unless evident reason suggests it. For it is equally unjust to excuse from guilt one who is guilty. Antoninus, part.

2, title 1, chapter 11, § 28, where he discusses when something should or should not be considered mortal, wrote: "Unless there is an express authority from Holy Scripture," or from the Canon, or from a determination of the Church, or from evident reason, it is determined most dangerously." For if it is determined that something is mortal, and it is not, the one who does it will sin mortally; because "everything that is contrary to conscience builds to hell." If, on the other hand, it is determined that something is not mortal, and according to the truth of the matter it is, his error will not excuse him from mortal sin... provided, of course, that he erred through crass ignorance; otherwise, if he erred through a probable reason, for example, because he consulted experts in that matter, from whom he was told that it was not mortal, then his ignorance seems to be almost invincible, which excuses him from all guilt. And this applies to those things that are not expressly contrary to divine or natural law, or to articles of faith, the ten commandments, and the like, in which the ignorant person is excused. Therefore, I have always feared that God would demand the same reason from me if I approved of lax opinions as probable, as if I rejected them as lax. Considering the present fragility of human nature, it is not always true that it is safer to guide souls along a stricter path, when we see that the Church has often condemned both excessive freedom and excessive rigor. Therefore, Gerson, in *De Vita spir.*, part 3, lecture 4, column 10, noting the damage caused by overly rigid opinions, observes: "It happens that through such public assertions that are too harsh and strict, especially in matters that are not certain, people are not at all drawn away from the mire of sins, but are plunged even deeper into it, because it seems more hopeless." Finally, I declare that if I have erred in anything, I hope that my error will be pointed out to me, for I am ready to retract it immediately; nor will I be ashamed to do so, as I have not been ashamed to do so in this my new edition, in which I have departed from several opinions that I once considered probable, but which, later, seemed to me either too lenient or too strict. Furthermore, dear reader, I warn you not to think that I approve of those opinions simply because I do not reject them; for I sometimes faithfully expound them with their reasons and proponents, so that others may, according to their own prudence...

[*Latin ed. p. 826*]

814. The weight of arguments will determine. Furthermore, note that when I call one opinion more true, I do not necessarily hold the contrary opinion to be probable, although I may not explicitly declare it to be improbable. Moreover, when I call one opinion more probable, without giving any judgment on the probability of the other, or when I dare not use that word, I do not mean that I consider it probable, but rather that I am referring the matter to the judgment of wiser men. Farewell.

ELENCHUS OF QUESTIONS, which the author, after the first Neapoli-

tan edition of the work, revised in light of matters that called for greater accuracy. In each of these questions, the location in the first edition of the book is noted first, followed by the location in the second edition, where the correction was made.

Question 1. Can a legate compensate the legatee for a legacy left in a non-solemn will? In the first book (col. 13, line 3, "It is probable"), the opinions of Lessius, Molin, Granado, Salm, etc., are cited, who said that it was probable. But in this present book, it is refuted; see book 3, section 521, note 3, and book 1, section 35.

Question 2. If a debtor gives something to his creditor in lieu of a debt, is he excused from restitution? In the first book (col. 13, line "Hinc, I"), the opinions of Rebellius, Cardinal, and Diana are cited, who considered the affirmative opinion to be probable. But see the limitation on this, in book 1, section 34, and book 3, section 700.

Question 3. If a thief sends the stolen item back to the owner through a faithful man, is the thief obligated to restore it again, if the faithful man does not return it? In the first book (col. 14, line 6, "Similarly"), Palatinus, Soto, Ledesma, and Gabriel are cited, who denied this. But in this, it is proven to be absolutely affirmed; see book 3, section 704.

Question 4. Is there an obligation to distribute alms to the poor from surplus funds? In the first book (col. 80, letter A), the opinions of Soto, Navar, St. Antoninus, Vasquez, etc., are cited, who denied this. But in this, the opposite opinion is considered better; see book 2, section 32.

Question 5. Is there an obligation to correct a sinner out of ignorance of human law? In the first book (col. 83, letter A, line "Here it is questioned"), the negative opinion was considered more probable. But in this, the affirmative opinion is considered more probable; see book 2, section 36.

Question 6. Does he who incites, either directly or indirectly, another to sin, always sin against charity? In the first book (col. 85, letter A), it was said with Palatinus, Sanchez, Bonaventure, Azor, etc., that it is probable that he does not sin against charity, unless he expressly intends the spiritual ruin of another. But in this, the true affirmative opinion is considered; see book 2, section 45.

Question 7. (1) Book 1, section 34. It is written: "It is inferred that he who is certain of the debt, and doubtful of the payment, is obligated to pay, as commonly taught by Suarez, Vasquez, Lugo, and others with Sanchez. However, in the case where the creditor also doubts his right, Laym and Sporer, with Tamburin, hold that the debtor is only obligated to the extent of the doubt." Layman adds, however, that he would not dare to condemn the creditor if he demanded the whole amount. And in book 5, section 700, question 2, "If a debtor gives something to his creditor in lieu of a debt, is he excused from restitution?" It is answered: "The first opinion denies this, with Sanchez, Laym, Sporer, Bonaventure, Diana, Salm, etc. The reason

is... The second opinion, which is held by Cardinal Rodriguez, Mazzarelli, Crocia, Tamburin, with his master Baldello, and which Diana considers probable, holding that such a donor satisfies his debt well and justly, concludes: 'The first opinion is more common, and indeed very probable; but this second opinion is not without probability.'"

[*Latin ed. p. 827*]

QUESTIONS CONCERNING REFORMED DOCTRINES. 815 Regarding the question of whether a disposition to sin is a cause for sin, the negative opinion was demonstrated in the first book (column 86, line Note). But in this, see section 2, number 46 (1). Question 8: Is it a mortal sin to ask someone for something that they will to not provide without committing a mortal sin, if that person is already disposed to sin? The opinion of Soti, Suar, and Azor, who denied this, was presented in the first book (column 86, line Question II). But it is stated here that the opposite should be followed; see book 2, number 47. Question 9: Do women sin gravely by exposing part of their breasts for adornment? In the first book (column 89, letter C, and column 250, end), the doctrine of Laymann, Cajetan, Navarr, Salm, etc., was followed on this point. But see how it is limited here; see book 2, number 55, line Question (2). Question 10: Is it permissible for a servant to accompany his master to a brothel, or to carry him in a carriage or litter? The opinion of Busemb, Navarr, Manuel, etc., who said that it is permissible solely by reason of servitude, was presented in the first book, column 94, letter B. But it is required here that there be at least a grave reason for incurring damage; see book 2, number 64. Question 11: Is it permissible for a servant, by reason of his servitude, to deliver gifts to the master's mistress? The opinion of Busemb and Sanch, who permitted this if it were food and drink, was presented in the first book (column 94, end, question 2). But it is denied here; see book 2, number 65. Question 12: Is it permissible for a servant, out of fear of death, to offer his shoulders, or to carry a ladder for the master ascending to commit fornication, or to open a door by force? This was entirely denied in the first book (column 95, question 4). But see what is said in book 2, number 66, line Question IV (3). Question 13: Is it permissible to sell wine to someone who will resell it mixed with water? The opinion of Palai, Sanch, and Tamb, who affirmed this if it could not be sold as conveniently to others, was presented in the first book (column 69, letter C, line Likewise). But this is not admitted here, unless out of fear of death or infamy; see book 2, number 69, line Question VII, end. (1) Book 2, number 46. After presenting the authors for both the affirmative and negative opinion, it concludes: "Let each one be fully convinced in his own mind." (2) Where it is upon: "Natalis, Alex., Roncagl., vehemently oppose this custom, saying that it is of itself a mortal sin, because it causes grave scandal to others." "When I performed the office of a preacher, I often tried to strongly condemn this harmful practice;

but since I am now performing the office of a writer on moral science, I must say that I believe it to be true, and that DD. Vidici do not deny 1. that those women who introduced this custom in some places certainly sinned gravely. 2. that the exposure of the breasts could be so immoderate that it could not be excused from causing grave scandal, as it is very provocative of lust, as Sporer rightly says. 3. However, if the exposure of the breasts were not so immoderate, and if there were a custom in some places for women to walk in this way, it would indeed be reprehensible, but not entirely condemned as a mortal sin. This is commonly held by Navarr, Cajetan, Less, Laymann, Bonac, Salm, Azor, Sanch, with Sylv. Filliuc, etc. It also seems to me to agree with St. Thomas, 2-2, question 169, article 3. Furthermore, I do not doubt that the opinion, as stated above, must be used with great discretion by a prudent confessor, so that he does not indulge in excessive license for women that involves lust, since those who live piously do not walk in this way. For Croix, with Eliz., rightly points out that such women, by exposing their breasts, often seek dishonest advances from men, in order to ensnare and captivate them; and for this reason, Eliz. rightly believes that many women will suffer damnation. Therefore, I do not doubt that such indecent customs must be vigorously restrained and eradicated by preachers and confessors, as D. Antonin teaches, part 2, letter 4, chapter 5. (3) Where it is written: "Viva and Milant, P. Concina, Salm, Croix, and others deny it. Because, as they say, such actions are never permissible, as they are intrinsically evil. But Busemb, Sanch, Less, contradict them, whose opinion, considered in terms of reason, seems more probable to me. And the same learned author continues in Tournely, volume 1, page 303, saying: 'I am not bound to suffer a great detriment in order to avert another's sin; let him bear the blame for his own sin.' However, since these cooperations truly contribute to the damage of rape, although they only materially contribute to the sin of the rapist, I believe that no one should be excused for cooperating, unless it is done maliciously."

[*Latin ed. p. 828*]

816 ELENCHUS Qu. 14. Whether it is permissible to sell ornaments to a girl who will use them for frivolous purposes? In the first book (column 96, line D, clause Eodem), the opinion of La Croix, citing Navar, Sanch, Bonac, etc., is presented, who state that it is permissible, provided that she purchases them from others as well. However, in this context, this is not admitted unless the seller suffers a notable detriment; see book 2, number 71, clause Eodem. Qu. 15. Whether it is permissible for sailors and mariners, solely for the sake of profit, to transport a prostitute to a port? In the first book (column 98, line 8, Licet), it is stated that it is permissible, according to Salm, Sanch, Azor, Nav, etc. However, in this context, it is not admitted unless there is a fear of a serious loss; see book 2, number 75, clause An autem. Qu. 16. Whether it is a mortal sin to request a loan from a usurer

without a serious reason, or to receive the sacraments from a priest who is a sinner and is administering them? In the first book (column 97, number 4, clause Utrum autem, and number 7, clause Sed quæstio), the opinion of Lugon, Soti, Sanch, Cajet, Led, Man, etc., is presented, who deny this. However, in this context, it is stated that this is a mortal sin, both against charity and against justice, unless a serious reason of necessity or utility intervenes; see book 2, numbers 47 and 77, clause 4. Licitum, speaking of a usurer; and number 70, concerning a sinful priest. Qu. 17. Whether it is permissible for one who intends to break a fast to offer food without a serious reason causing detriment? In the first book (column 47, number 7, clause Volenti), the opinion of Lessii, Cajet, Nav, and Vasq, who affirm this, is presented. However, in this context, it is rejected; see book 1, number 80. Qu. 18. Whether in matters of simony and usury, an antidotal clause can be included in a contract? In the first book (column 118, line A, clause Quæritur in fine), it is stated, with Salmant, Val, Cajet, Pal, Less, etc., that it is permissible, if the agreement is for remuneration in general, without adding a new obligation. However, this is entirely rejected; see book 3, number 53, and number 764, clause Adverte in fine. Qu. 19. Whether an expletory oath is a true oath? In the first book (column 146, line A, clause Notandum), it is stated, with Salm, Busemb, Sanch, Pal, etc., that it is commonly denied. However, in this context, it is affirmed, if the name of God is expressly mentioned in the oath; see book 3, number 143. Qu. 20. Whether, in an assertive oath, it is a mortal sin to swear falsely with a lack of justice? In the first book (column 148, line A), it is stated that it is more likely to be only venial. However, in this context, it is added that it is mortal if one swears in order to promote defamation; see book 3, number 146, clause Hoc. Qu. 21. Whether a pilgrim can obtain a dispensation from the bishop of the place where he is found, regarding laws, vows, and oaths? In the first book (column 758, line E, clause Nota hic), it is entirely denied. However, see book 1, number 158 (1). Qu. 22. Whether a husband can kill someone who intends to commit adultery with his wife? In the first book (column 239, clause Dicendum II), it is absolutely denied. However, in this context, it is not rejected if the man kills the person before the act, in order to prevent the adultery from occurring; see book 3, number 391, clause Quando. Qu. 23. Whether spectators who attend a lewd comedy with money or applause sin grievously? In the first book (column 251, clause Quæres 2), it is stated that it is probable that secondary spectators do not sin, namely, those without whom the comedy would not be performed. However, in this context, the opposite is seen; see book 3, number 427, clause Num autem. (1) It is read: "Four opinions are present, and after presenting three of them with their authors and reasons, a conclusion is drawn. The fourth opinion, as Croix says, and which is commonly accepted, as Salm asserts, to whom we subscribe, holds that a pilgrim can obtain a dispensation from the bishop of the place, not only in laws, but also in

vows and oaths, provided that he intends to remain there for a significant period."

[*Latin ed. p. 829*]

QUESTIONS CONCERNING REFORMED MATTERS. 817. Question 24. If a beneficiary spends the superfluous fruits of his benefice for his sustenance on profane uses, is he bound to make restitution? In the first book (column 270, line "Utrum autem"), the opinion that he is not so bound appears to be more probable, with the support of St. Thomas, Soto, Lugubone, Palearius, and others. But in this place, we have stated the opposite opinion to be more probable, all things being equal; see book 3, number 492. Question 25. Is a thief bound to make restitution if the damage is greater, namely, if the thing could not be restored to the owner except at a cost greater than the value of the thing itself? In the first book (column 295, letter B), the opinion of the theologians of Salamanca, Soto, Palearius, Lessius, Concinius, and Busembach, who deny this, is presented. But in this place, the opposite is held to be true, unless the expenses are far greater; see book 3, numbers 598, 697, and 752. Question 26. Is one who receives a thing from another, who has mixed the stolen thing with his own, bound to make restitution? In the first book (column 299, letter B), the opinion of Tamburrini, with Sanchez and others, who deny this, is presented. But in this place, it is entirely disapproved; see book 3, number 612. Question 27. Can a beneficiary be excused from restitution if he omits his office for one day, but makes up for it on another day? In the first book (column 310, end, question 5), the affirmative opinion of Salmeron, Molfessis, Paludanus, Bonacich, and others, is presented. But in this place, the negative opinion is held to be true; see book 3, number 667. Question 28. Is a beneficiary bound to make restitution if he omits a part of his office that is less than a full hour? In the first book (column 311, question 5), the opinion of Navarretus, Tollet, and Viva, who deny this, is presented. But in this place, the opposite opinion appears to be truer; see book 3, number 668. Question 29. Is a simple beneficiary bound to restore all the fruits of the benefice if he omits his office? In the first book (column 312, question 18, line "Quid, etc."), the opinion of Henry, Metina, and Manuel is presented, who say that he is bound to restore only one-third of the fruits. But in this place, that opinion is disapproved; see book 3, number 673, line "Quid." Question 30. Is it lawful to accept a gift from one who is burdened with heavy debts? In the first book (column 327, letter B), the affirmative opinion of Lessius, Molerus, Navarretus, Laym, and others, is presented. But in this place, it is refuted; see book 3, number 722. Question 31. Is it necessary, in a loan, to demand interest, in order to warn the borrower of the just title that already exists? In the first book (column 343, letter E, line "Sed dubitatur"), the negative opinion of Lessius, Lugubone, Bonaventure, and Trullius, and others, is presented. But in this place, the affirmative opinion is considered

truer; see book 3, number 769, line "Sed dubitatur." Question 32. Can a lender retain the profit that was exacted, if a just title was present, but he did not warn the borrower about it, and the borrower contracted in good faith? In the first book (column 394, question III), the affirmative opinion (although considered less probable) of Lugubone, Dianus, Sa, and Tan, is presented. But in this place, it is refuted; see book 3, number 773. Question 33. Is it lawful to sell valuable things at a very low price? In the first book (column 355, letter D), the affirmative opinion of Soto, Tollet, Dianus, Tan, Vallius, Regius, and others, is presented. But in this place, the contrary opinion appears to be more probable; see book 3, number 808. Question 34. If a monopoly is unjustly imposed by merchants, is it lawful for others to sell the same goods at the same price? In the first book (column 357, letter G, line "Sed hinc"), the affirmative opinion of Salmeron, Bonaventure, Trullius, Regius, Medina, and others, is presented. But in this place, the negative opinion is considered to be clearly better; see book 3, number 817, line "Sed hic." Question 35. Is it lawful to buy a valuable thing from someone who does not know its value, at the lowest price? In the first book (column 357, letter H, line "Idem"), the opinion is embraced.

[*Latin ed. p. 830*]

818. An objection is raised; however, the contrary is defended; see book 3, number 819. Also, see question 36: Is it permissible for a cleric to lease out property to breed animals, so that he may later sell them? In the first book (column 361, line: "Quaeres"), it is stated that it is permissible if the leasing does not cause a significant distraction from the sacred ministry. However, in this instance, it is not admitted, because it is not free from the desire for dishonest gain; see book 3, number 835. Also, see: "Is it true?" Question 37: If property is lost, does one still owe the census by natural law? In the first book (column 366, line: "qu. 3"), a probable negative opinion is given, along with Soto, Pal, Salm, Covarr, etc. However, in this instance, we have stated that the affirmative opinion is to be held; see book 3, number 847. Question 38: Can someone who compels another to gamble with injury retain the profit? In the first book (column 375, line: "D"), a negative opinion is presented. However, in this instance, the affirmative opinion appears more probable, provided that the one who compels does not surpass the compelled in skill at gambling; see book 3, number 880. Also, see: "Therefore." Question 39: Is there a serious obligation to leave one's goods to one's brothers and sisters? In the first book (column 398, line: "A"), the opinion of Salm, Nav, etc., is reported, stating that there is no such obligation unless they are in extreme need. However, in this instance, we have stated that it is absolutely necessary to hold that one sins gravely by leaving goods to outsiders, if one's brothers and sisters are in great need; see book 3, number 946. Question 40: Is it permissible to reveal another's crime in order to avoid one's own damage, if the knowledge of the crime was obtained by force or

deceit? In the first book (column 407, line: "A, v. Sed hic"), a probable affirmative opinion is given, along with Salm, Less, and P. Nav. However, in this instance, the opposite opinion is considered better; see book 3, number 969. Also, see: "But here, a great..." Question 41: Is one obligated to make restitution for an insult that was secretly inflicted upon another? In the first book (column 410, line: "Sed quær. 1"), the negative opinion of Laym and Mol is reported. However, in this instance, we have stated that the affirmative opinion should be followed absolutely; see book 3, number 985. Question 42: Does taking small amounts of sweets during fasting violate the fast? In the first book (column 419, line: "F"), the negative opinion of Salm, Sylv, and Ab is presented. However, in this instance, it is stated that the opposite opinion should be held absolutely; see book 3, number 1019. Question 43: How often can chocolate be consumed in a day? In the first book (column 425, line: "Orandum"), a probable affirmative opinion of P. Viva is given, if it is taken as a usual drink. However, in this instance, such a drink is not permitted, except for only one cup per day, due to custom; see book 3, number 1023, line: "Secunda, in fine." Question 44: Does a religious person, with general permission from the prelate, sin against poverty by using goods for illicit purposes, and is he obligated to make restitution? In the first book (column 450, line: "E, v. II quæstio"), a not improbable negative opinion is given, along with de Alexandro, Suar, Bann, Lug, etc. However, in this instance, the affirmative opinion is embraced; see book 3, number 873, and book 4, number 31. Question 45: Should a patron present more worthy candidates for a benefice? In the first book (column 469, line: "A, q. 2"), a probable negative opinion is given, along with Pal, Garc, P. Nav, Rodr, etc. However, in this instance, it is stated that the affirmative opinion should be held absolutely; see book 4, number 97. Question 46: Does a bishop sin mortally by conferring a benefice to a less worthy person? In the first book (column 291, qu. 3), negative opinions are presented, along with Nav, Sa, Soto, Dic, Gut, Diana, etc. However, in this instance, the affirmative opinion is considered more probable; see book 4, number 93.

[*Latin ed. p. 831*]

QUESTIONABLE POINTS. 819 Q. 47. Is a bishop who confers a benefice obligated to restore it to a less worthy recipient? In the first book (col. 292, line "Magis"), the negative opinion of Nav. Henr. Ledesm., etc., appeared probable. But in this work, the opposite is embraced; see book 4, no. 109. Q. 48. Does one gravely sin and is obligated to restore a benefice received with a doubtful mind, or with the condition of receiving the priesthood within a year? In the first book (col. 471, line "A"), the negative opinion of Nav. Barb., Garciæ, etc., was presented, as well as the opinion of Salmant., who admit it only if the mind is conditioned. But in this work, the opposite appeared better, whether the mind is doubtful or conditioned; see book 4, no. 114. Q. 49. Is plurality of benefices forbidden not only by canonical law,

but also by natural law? In the first book (col. 473, line "A"), the negative opinion appeared probable with Lug., Innoc., Fill., Val., Led., etc. But in this work, we stated that the affirmative opinion is to be held, unless a pontifical dispensation and a just cause are added; see book 4, no. 117. Q. 50. Is it permissible without grave sin to exchange a divine office for another that is notably shorter? In the first book (col. 494, line "A"), the affirmative opinion was presented, except for the office of Palms, with the office of Easter, or Pentecost, as held by Sylvest., Salm., Vill., Diana, etc. But in this work, it was not admitted as probable; see book 4, no. 161, line "Quær. III." Q. 51. Is it permissible to recite Matins two hours after midday? In the first book (col. 496, line "D"), the affirmative opinion appeared probable with Salm., Sanch., Tamb., Mol., Led., etc., but in this work, it was stated that the opposite is to be held; see book 4, no. 174, line "Hic quær. 1." Q. 52. Are sins multiplied by the diversity of total objects, namely, if one kills four people at once? In the first book (col. 665, line "An autem"), the negative opinion appeared probable with Suar., Lug., Bus., Viva, etc. But in this work, the opposite was embraced; see book 5, no. 45. Q. 53. Does a confessor commit a sin when successively absolving many penitents? (col. 563, line "II. Quoad actus.") The affirmative opinion appeared probable with Salm., Lug., Viva, Spor., etc. But in this work, it was rejected; see book 5, no. 50, no. 6. Q. 54. Is it permissible, without causing infamy, for one to dissolve the friendship of another by recounting his natural defects, so that he may take the place of the expelled one? In the first book (col. 576, line "A"), the affirmative opinion of Salmant., Soti, Bonac., Arag., Prado, etc., was presented. But in this work, the opposite was embraced; see book 5, no. 72, line "An citra." Q. 55. Is it permissible to become intoxicated by the advice of doctors, if intoxication is considered necessary to expel a disease? In the first book (col. 577, line "2. Non est."), the affirmative opinion of Busemb., Sylv., Cajet., Lessii, Salm., etc., was presented. But see how it is limited in this work, book 5, no. 76, line "hic qu. I." (1). Q. 56. Is it permissible to become intoxicated to avoid death, which another threatens? In the first book (col. 578, line "C."), the affirmative opinion appeared probable with Lessii, Laym., Bonac., Busemb., etc. But in this work, the negative opinion was embraced; see book 5, no. 76, line "qu. II." (1). Valdé, DD., labor in this question, as written in the cited passage, although it seems that such a case could rarely occur. The first opinion affirms, while the second opinion denies. Nevertheless, the first opinion seems sufficiently probable, and indeed, it seems more probable in the case in which the drinking of wine is offered to expel or correct evil humors; then, the privation of reason occurs accidentally and indirectly, and therefore it can be permissibly allowed. Otherwise, it should be said if the drinking is given directly to intoxication, or to cause a privation of reason, because this would always be an intrinsic evil. Therefore, it is never permissible to become intoxicated in order to lull

the senses, so that one may not feel the torments.

[*Latin ed. p. 832*]

820 ELENCHUS. Question 57. Does it suffice that one confess his sins during the Mass? In the first book (column 210, question 2), the opinion of Palai, Hurt, La-Croix, Pichler, Gobat, and others, affirming this, is presented, provided that one attends the Mass in some way; see book 3, number 314 (1). Question 58. Is it permissible to receive something for sustenance from one who is about to enter, if the monastery is wealthy? In the first book (column 130, see "Sed quæritur"), the opinion of Salm, Nav, Tol, Pal, Sanch, Bon, Sot, and others, affirming this, is presented. However, in this book, the opposite is embraced; see book 3, number 92, section 2. Question 59. In the sacrament of baptism, must water be poured, while the words "I baptize you" are spoken? In the first edition (column 585, letter A), it was affirmed. But in this second edition, it is shown to be sufficient that the form be pronounced before the application of the material ceases; see book 6, number 9, section 3. Question 60. Are all the matter and forms of the sacraments determined by Christ in a specific manner? This was denied in the previous book (column 804, question 2); but in this second book, the opposite appears more probable; see book 6, number 12. Question 61. Does a minister sin gravely by conferring sacraments in mortal matters, even if he is not specially ordained for it, or if he does not administer them solemnly? This was denied in the previous book (columns 594 and 595); but here it is affirmed; see book 6, numbers 31 and 32. Question 62. Does a priest sin gravely by administering the Eucharist in mortal matters? In the previous book (column 655, see "An autem"), a negative opinion was considered probable. But here we refute it; see book 6, number 35. Question 63. Can a minister give a sacrament to an unworthy person out of fear of death? In the previous book (column 595, doubt 5), a positive opinion was considered probable. But here we maintain the negative; see book 6, number 49. Question 64. Can a cleric, clothed in a shameful vice or other fault, who desires to ascend to the sacred order, be absolved by simple, extraordinary signs, sufficient only to receive the sacrament of penance? This was affirmed in the previous book (column 598, question 3). But here it is denied, unless very extraordinary signs are present which demonstrate positive suitability for ordination; see book 6, in the Dissertation, number 63. Question 65. Are priests ordained by the imposition of hands alone? In the previous book (column 806, letter F), we denied this. But here we consider the affirmative opinion to be more probable; see book 6, number 749. Question 66. Can a dying person who received Holy Communion in the morning also receive Viaticum on the same day, if the illness arrives? In the previous book (column 668, letter A), we considered both the affirmative and negative opinions to be probable. But here we distinguish whether the illness is natural or violent; see book 6, number 285, section 3, doubt 3.

Question 67. Does a priest who negligently omits to say the sacred promise, having received a small stipend, sin gravely? In the previous book (column 676, letter C), we considered the negative opinion to be probable. But here we maintain the affirmative; see book 6, number 317, question 3. Question 68. Can a bishop regulate the number of Masses prescribed by a testator? It was said in the previous book that he can, if suitable fruits are not received (column 680, letter F). Here, however, it is denied; see book 6, number 331, section 3, doubt 1. Question 69. Is it permissible to celebrate privately on the day of the Lord's Supper? In the previous book, it is answered: Negatively, with a common opinion.

[*Latin ed. p. 833*]

QUESTIONS FOR RECTIFICATION. 821. In this matter, we adhere to the affirmative opinion (column 687, line E). But here, we maintain that the negative opinion must be held, book 6, number 350. Question 70: Does the altar lose its consecration if the seal is broken, or if the sepulcher containing relics is removed? In the former book, it was said to be probable that it does not lose its consecration (column 693, line C). But here, we maintain the opposite, book 6, number 369, section 2. Question 71: Are two cloths sufficient on the altar, or is one doubled cloth sufficient? In the former book, we affirmed (column 697, line C). But here, we say that the contrary must be held, book 6, number 375. Question 72: Can the water used for the ablutions be poured out anywhere other than into the sacrarium? In the former book, it was said that it is sufficient if it is poured out in a suitable place (column 699, line E). But here, we maintain the opposite, book 6, number 387, note II. Question 73: Can abbots consecrate chalices for churches belonging to others? In the former book, the affirmative opinion was cited (column 699, line B, end). But here, we say that the opposite must be held, book 6, number 381. Question 74: Must the pyx be blessed? In the former book, the negative opinion was presented (column 698, line H). But here, we maintain the opposite, book 6, number 385. Question 75: If, after receiving the Sacrament, a priest reasonably doubts that the wine was actually wine and not vinegar, must he then consecrate both substances again under a condition? Here, we maintain that it must be affirmed, book 9, number 206, see "Quoad"; whatever was said in the former book. Question 76: By which bishop must confessors be approved? In the former book (column 247, line E), it was said that it is probable that they can be approved even by the bishop of confessors, or of the penitent. But here, we say that they must absolutely be approved by the local bishop, book 6, number 548. Question 77: If a doctor is consulted by a confessor, is he bound by the seal? In the former book (column 776, line G), we said that it is probable that he is not bound. But here, we maintain the opposite, book 6, number 648. Question 78: Is a mute bound to confess in writing? In the former book, the negative opinion seemed probable (column 726, line B). But here, we say that he

is bound, if it can be done conveniently, book 6, number 479, see "Quær." Question 79: During the Jubilee, must confession be made within the same week in which the works of penance are performed, so that the penitent may be absolved from reserved sins? In the former book, we adhered to the negative opinion (column 743, line 2). But here, we maintain the opposite, book 6, number 537. Question 80: If someone who has confessed during the Jubilee is then absolved by anyone, can he then be absolved again by anyone? In the former book, the affirmative opinion was cited (column 743, line 1). But here, we maintain the negative opinion; book 6, number 537, see "Quær." II. Question 81: Can a parish priest in a foreign diocese receive the confessions of others with the permission of the priest of that place? In the former book, we affirmed (column 746, line B). But here, we deny it, book 6, number 544, see "Hic." Question 82: Can a simple priest absolve a dying person, in the presence of an approved confessor? In the former book (column 752, line D), the affirmative opinion was cited, which we reject here, book 6, number 562. Question 83: If someone, ignorant of a bishop's reservation, incurs it, does he incur it? In the former book, we said that the negative opinion is probable (column 757, line A). But here, we reject it, book 6, number 581. Question 84: If those who are indirectly absolved from a reserved sin in a case of necessity by someone who does not have the power to do so, are they bound to present themselves to the bishop afterwards?

[*Latin ed. p. 834*]

822. LIST. In the preceding book, I refuted (col. 936, line "An autem"). But here, observe the distinction presented in book 7, chapter 91 (1). Question 85: If a confessor errs culpably concerning the value of the sacrament, is he obligated to warn the penitent of the error, even if doing so causes him grave inconvenience? In the preceding book, we stated the negative opinion as probable (col. 766, line I). But here, we maintain the affirmative opinion, as in book 6, chapter 619. Question 86: Can a simple priest absolve a penitent who, while having a reserved case, confesses only in that location and not in his own diocese? In the preceding book, the affirmative opinion was presented (col. 758, at the end, line "Quæritur an"). But here, we refute it, as in book 6, chapter 588. Question 87: If someone has confessed to a higher priest and has forgotten a reserved case, does he remain directly absolved from that case? Here, it is denied as probable, as in book 6, chapter 597, whatever was said in the preceding book. Question 88: Does one incur suspension if he is ordained with a donated patrimony, but with a condition, or a promise, of returning it to the donor? In the preceding book, a probable negative opinion was stated (col. 829, question 2). But here, in book 6, chapter 822, observe the distinction to be maintained, namely, whether the donor had a true, or merely a pretended, intention of donating. Question 89: If someone, after contracting betrothal with one person, puts

on the wedding garment, is he obligated to wear it again if the first person dies? In the preceding book, it was stated probably that he is not obligated (col. 845, line I). But here, the contrary is maintained, as in book 6, chapter 875, line "Quæritur." Question 90: If someone falsely contracted marriage, is it sufficient for the validity of that marriage that he alone gives his consent? Here, in book 6, chapter 1114, the affirmative opinion is considered truer; although in the preceding book (col. 899, line "Hinc infertur"), it was not admitted. Question 91: Is there no dispensation from an impediment between close relatives if the union between them is concealed? In the preceding book, a probable negative opinion was considered (col. 904, line "Quæritur 3"). But here, in book 6, chapter 1134, it is entirely rejected, even if the union has not taken place, in order to more easily obtain a dispensation. Question 92: Can a simple priest absolve from venial sins, and from a lesser excommunication? In the preceding book (col. 746, line A, and col. 928, line "Certum"), the affirmative opinion, although not admitted, was not entirely rejected. But here, in book 7, chapter 71, it is entirely rejected, due to the decree of Innocent XI. Question 93: If someone is absolved by a bishop in a necessity from a papal censure due to a temporal impediment, is he excused from going to Rome if he has already satisfied the terms? In the preceding book, it was stated probably that he is excused (col. 933, question III, at the end). But here, we say that it must be so, as in book 7, chapter 87. Question 94: If someone has a public papal censure, and has been punished by a bishop, can he be absolved by another? In the preceding book, a probable affirmative opinion was considered (col. 930, line "Hinc, infra dub. 1"). But here, we say the contrary is truer, as in book 7, chapter 77. Question 95: Can bishops absolve from hidden papal censures outside of confession? In the preceding book, the affirmative opinion was presented (col. 942, note 8). But here, in book 6, number 593, line "Hic autem," we refute it, based on the declaration of Gregory XIII (1), who wrote: "If a sin has been absolved in articulo mortis, or in danger of death, then no obligation remains to present oneself to a superior, because then the sin has truly been directly absolved; with that, all reservation ceases. Otherwise, if a sin has truly been absolved by an inferior because of some impediment to approaching a superior outside of the article of death, because then no inferior can directly absolve from reserved cases, but only indirectly. Therefore, the penitent, in order to be directly absolved by a superior afterward, is obligated, once he has recovered, to go to him."

[*Latin ed. p. 835*]

QUESTIONS FOR RECTIFICATION. 823 Q. 96. Whether it is permissible to write to an excommunicate person? In the previous book, it was stated that it is probably permissible (col. 964, line F). But here, we deny it, l. 7, n. 193. But whether it is permissible to restore a person to communion after excommunication? In the previous book (col. 965, dub. II),

we stated the affirmative opinion as absolutely probable. But here, d. n. 193, we consider the opposite opinion to be more probable, although we do not reject the former. Q. 97. Whether a duel can be accepted, in order not to incur a great and certain loss of property? Whatever was said with the Salmanticenses in the previous book (col. 970, line A, Note I), today this opinion is condemned by Benedict XIV. See l. 3, n. 400, prop. IV. Q. 98. Whether parents can force a girl to enter a monastery for the sake of education? In the previous book (col. 983, at the beginning), the affirmative opinion was considered probable. But here, l. 7, n. 212, v., the opposite opinion appears to be absolutely more probable, unless the girl is in danger of incontinence. Q. 99. Whether bigamy incurs irregularity, whether by contracting two marriages, both null, or by fictitiously contracting a second marriage to obtain intercourse. Here, we say that it should be affirmed, l. 7, n. 446 and 447, whatever was said in the previous book. Other recent retractions of opinions that were listed in the previous edition are added. Question I. If someone judges it probable that a vow, canonical hours, or penance has been fulfilled, are they bound to fulfill it, if it is still probable, or doubtful, that it has not been fulfilled? Several authors deny this, l. 1, n. 29, l. 3, n. 700, v. Limitant., and l. 4, n. 150. But the opposite should be held, because the obligation is already contracted, until it is certainly not fulfilled. Question II. Whether declarations of the Sacred Congregation of Cardinals have the force of law? Several authors deny this, unless they are published not only by the Pope, but also by order, so that they are solemnly promulgated throughout the Church, l. 1, n. 106, v. Quær. 2. However, it should be added that such declarations, which have already been universally disseminated throughout the Church, and have been promulgated in this way, bind all sufficiently. Question III. Whether a bishop can dispense in canonical statutes, in which dispensation is not reserved? Previously, it was considered sufficiently probable, the affirmative opinion with Soto, Covarr., Castrop., Bonac., and St. Antoninus. But after better consideration, it seems that the negative opinion should be held entirely, from clement. 2, de Elect., where: "The law of the superior cannot be abolished by the inferior." See c. Dilectus, de Temp. ordin., l. 1, n. 191, v. Hanc. Question IV. Whether a delegate of the prince, or a delegate to the university of causes, can delegate further? It is affirmed, l. 1, n. 193. But this must be limited, according to what is said in l. 6, n. 566, so that this is not understood, when the delegation is made as an official act, or when jurisdiction is delegated to someone, such as a privilege annexed to his perpetual office, or dignity. Question V. Whether the law ceases when the reason for the law in particular ceases? The opinion that calls this probable is cited, and this is held by the Salmanticenses and Viva, with Cajetan, Sylvester, Panormitan, Valent., Sa, Cardenn., Navar., Abbate, Comit., and others, l. 1, n. 199, v. quæstio. But here, it should be noted that this opinion is hardly ever probable in practice; because it hardly ever happens that all danger of illusion ceases

in a particular case. Question VI. If someone, with the intention of stealing, steals one hundred gold coins.

[*Latin ed. p. 836*]

824 If someone commits a sin repeatedly, does that mean they commit a hundred sins? See book 5, chapter 44. It was stated that committing a single theft, or a single sin, is probable. However, upon further consideration, it is better to say that such thefts are a hundred distinct mortal sins, since each theft contains a distinct evil within itself.

Question VII. An act of charity towards God should be performed at least once a month, as stated in book 2, chapter 8. It should also be added that, likewise, we are bound to perform an act of charity towards our neighbor at least once a month; otherwise, it will be difficult to observe this precept of charity towards our neighbor.

Question VIII. It was stated in book 3, chapter 244, that it does not seem improbable, according to Lessius, Salmeron, Bona, etc., that a vow made by oneself can be changed to an equivalent one. However, it is much more probable, according to St. Thomas, Cajetan, Suarez, and others, that it cannot be changed; for God prefers the fulfillment of a promise over another.

Question IX. Several doctors, according to Busenbaum in book 3, chapter 381, state that it is permissible for an honorable man to kill an aggressor who is attempting to assault him. However, it should be added what Silvius wisely teaches: "Even if honor is a good thing," we consider it less important than wealth, or perhaps of no importance at all, that there should be a case in which it is permissible to kill an aggressor in defense of honor alone. See 2-2, question 64, article 7, question 9.

Question X. Are beneficiaries who spend the superfluous revenues of their benefice on profane uses obligated to make restitution? In book 3, chapter 492, I stated that it was highly probable that they were obligated to make restitution; but after further consideration, it seems equally probable that they are not obligated, based on the authority and reasoning of St. Thomas in 2-2, question 185, article 7, see citation number 492.

Question XI. If someone steals something and the owner is uncertain, to whom should it be returned? In book 3, chapter 589, it was stated that restitution should be made to the poor, or to pious institutions of any place. However, several limitations should be added to this, which you will find in the cited passage, or shortly thereafter (1).

Question XII. If a crime is public in one place, can it be revealed without guilt, at least without serious guilt, in another place, where it is still hidden? It was stated in book 1, chapter 86, that, according to Lugaresio, Cajetan, Navarrus, Salmeron, etc., it is highly probable that it is permissible to reveal it to others.

(1) Book 3, treatise 5, on the seventh precept of the Decalogue, chapter 2,

on restitution, question 5, number 89, question 1. How should restitution be made if the owner of the thing is uncertain? It must be distinguished and determined whether the thing received was obtained in good faith or bad faith. If in bad faith, then it must be distinguished again: either the uncertain owner of the thing is only unknown in particular, as if it were known that the thing belonged to one of three or four people in the place, but it is not known to which of them it specifically belongs; in this case, restitution cannot be made to the poor; but the thing must be divided among those who are suspected of being the defrauded party; so say Silvius, Lessius, Palaus, Molinos, Cajetan, Navarrus, etc. Or, the owner is unknown in general, so that it cannot be determined among the inhabitants of the place to whom, or to whom, the thing belongs; and in this case, restitution should be made to the poor, or it is held that it should be made to pious institutions. As commonly taught by Lessius, Navarrus, Salmeron, Crocius, Bona, Azorinus, Molinos, Vasquez, Fillius, etc. However, this is true, provided that due diligence has been used to find the true owner; for if restitution is made to the poor after due diligence has been used, and then the owners appear, they will certainly have to compensate those to whom the thing was given; moreover, this is true when there are fewer defrauded parties, namely three or four. So that if restitution is made indiscriminately to anyone in that place, the thing will probably not reach the hands of the true owner; and therefore, restitution can be made to the poor of any place, as commonly held by Sylvius, Bonacini, Salmeron, with Soto, Rebel, and Tapia; and although Silvius says that it is more appropriate that, in this case, restitution be made to the poor of that place where the theft was committed, he adds that it is not necessary. If, however, there are many and various unknown owners of a community who have been harmed, then restitution must be made to the poor of that same community.

[*Latin ed. p. 837*]

QUESTIONS FOR REFORM. 825. But see book 3, paragraph 974, where the opinion is now limited only to those offenses that harm others. Question 13. Does one gravely sin if, on a day of fasting, one noticeably delays past the meridian hour without a just cause? Book 3, paragraph 1016, states that, according to Lessio, Tol, Bonac, Laym, Salm, Castrop, etc., the negative opinion is more probable. But, after a better examination of the matter, we say, with Azor, Sanch, Nav, Sylvest, that the affirmative opinion should be held entirely. Question 14. Can a bishop settle lawsuits concerning the goods of the Church? Book 4, paragraph 187, states that he cannot. But this should be understood only when the Church would have to cede something with its possessions through the transaction; otherwise, if nothing is ceded from the possessions. Question 15. If a vow has certainly been made, but is only probably fulfilled, is the person making the vow obligated to completely fulfill the vow? Several authors deny this, namely Lug,

Ronc, Salm, with Laym, etc. But I believe, with Conc. Antoine, etc., that the vow should be fulfilled; for when a vow is certain, the obligation to fulfill the vow is present. See book 1, paragraph 29. Question 16. Is a penitent obligated to confess a mortal sin that has certainly been committed, if he only probably believes that it has been confessed? Suar, Lug, Salm, and others deny this. But I say, with Concina and others, that he is obligated to subject that sin to the keys, since if there is doubt about the confession, the obligation of confession is certain. But see what is said in book 6, on penance, paragraph 477. Question 17. Is it permissible to confer a sacrament under a condition, without that condition being expressed orally? In book 6, paragraph 29, at the end, it is affirmed, with Tourn, Ronc, Castrop, and others, that this is commonly the case. But since there are some authors, such as Gonet, Juenin, Contens, Serry, etc., who hold (although less probably) that the value of the sacrament does not depend on the intention of the minister, but only on the sacrament itself being seriously performed, it is safer to express the condition in words. Question 18. Is one obligated to confess a mortal sin that has certainly been committed, if, afterward, one is in doubt whether it was or was not confessed? In book 6, paragraph 477, it was stated that one is not obligated if one believes that the sin has already been confessed to the confessor. But now we say that one is obligated, because just as the obligation to confess was certain, so too the confession should be certain; see the cited number. Question 19. Can a priest who has been separated from the Church, as if he were a heretic, schismatic, or excommunicated, absolve those who are in danger of death, if another is absent? In book number 560. Question 1. The negative opinion has been proven. But now we prove the contrary, with Silv. Collet, Sylv. Cano, etc. Question 20. If a penitent has confessed to a superior, and has innocently forgotten a reserved sin, can he then be absolved from it by any confessor? In book 6, paragraph 597, we have proven the negative opinion. But now, by the authority of Pontas, Collet, and especially Silvii, who, with Sylvestr. Navar, Adrian, Angel, Covar, and many others, hold the affirmative opinion as certain, we cannot reject it. Question 21. Does the incapacity to celebrate, which confessors incur by soliciting, occur before a sentence? In book 6, number 705, it is affirmed. But now see what is said in this edition, at the cited number (1). (1) In the previous edition of this work, I affirmed that the privative penalties which affect the ability to acquire a right, or the cessation from using a right already acquired, as the common Doctors teach, are ordinarily incurred before a sentence. However, a certain devout religious man,

[*Latin ed. p. 838*]

826 LIST OF REFORMED QUESTIONS. Question XXII. Can bishops absolve from excommunication those who have attempted to separate delinquents from the Church? L. 1. Appendix 2. n. XXVIII, affirms. But now the

opposite must be held, as with Fagnan, who approves of this, see the cited passage. Question XXIII. In the practice of confessors, placed after Book VII, it is said in the last chapter, number 287, that bishops and their delegates are granted the faculty of granting plenary indulgences to the infirm who request them at the point of death; it must be added that bishops must request and obtain this faculty from the reigning Pontiff. See now Chapter 2, §. 8. n. 287. Question XXIV. In the same practice, n. 98, it is said in the rubric that it is illicit to use wine in Mass that is beginning to turn sour: note what is added in the examination for ordination, c. 3. art. 3. sect. 3. § 2. on the Sacrifice of the Mass, n. 98 (1). Question XXV. In the same Practice, Appendix III. n. 122, it is said that it is doubtful whether it is probable that celebrating without a cross is not a mortal sin. But after more mature consideration, it now seems to me quite probable, as it is common among doctors, and there is no certain basis for the contrary. Question XXVI. If a chalice is re-gilded, must it be re-consecrated? l. 6. tract. 3 de Euch. cap. 3. dub. 2, I considered it more probable to deny this, as did Laym, Lugo, etc. But after better consideration, I now think, as with Ferraris, Suar., etc., that it is more probable that the chalice must be re-consecrated; see the annotation added at the end in the cited passage (2). Let it be printed, if it seems fitting to the Most Reverend Father, Master of the Sacred Apostolic Palace. Benedict Fenaja, Patriarch of Constantinople, holding the office. Imprimatur. Fr. Thomas Vincent Pani, of the Order of Preachers, Master of the Sacred Apostolic Palace. Rome, MDCCCVI. At the Lazari printing house of the Apostolic Chamber, with the permission of the Superiors. This has been read by me in my work, and he wrote to me from Rome that two theologians of the Sacred Congregation of the Roman Inquisition held the opposite opinion, namely that a sentence was required to incur the aforementioned penalty. At the beginning, this opinion did not occur to me: but later, after more careful consideration, in the same work, n. 248, I observed that Suarez, Bonac., Salm., with Tapia, Vasq., Montesin., etc., in the places cited there (to which Euseb. Amort. 1. R. n. 148 recently agreed), say that a declaratory sentence is well required even with regard to privative or disabling penalties, in the case where the accused cannot carry out the penalty without his own infamy, as would normally happen in our case, if the priest who is soliciting should have to abstain from celebrating for a long time. I say for a long time: for if he could obtain dispensation from the aforementioned prohibition in a short time, and in the meantime could abstain from celebrating without his own infamy, he is bound to abstain from it. (1) Where it is read: "But wine, when mixed with another liquid, and even if mixed in a small amount, or must of grapes freshly pressed, is indeed a suitable material for the sacrament, but is gravely illicit, as it is said in the rubric, where the same is taught about wine that has become suitable for the sacrament, or has been corrupted, or has become somewhat sour. However, Lu Croiæ, Gobatus, and Sporer say that, if another wine is

lacking, it is permissible to use wine that is only slightly sour. The Cardinal Lambertinus says, Notif. 77. n. 2, that the aforementioned rubric is derived from the teaching of St. Thomas, 3 parts. quest. 74. art. 5. ad 9, who says that corruption, although it may sin, is sufficient. Therefore, the rubric does not seem to be to be taken with so much rigor as to include even the first degrees of acidity, but only those that have already begun to appear, which is commonly called wine that is beginning to turn sour, or wine called 'colla punta,' or 'andato alio spunto.'" (2) Where dub. 4. n. 370. 2 writes that chalices that have been re-gilded must be re-consecrated, because of the ecclesiastical law and the accepted custom: then he adds: "However, in the case where the gilding is lost through long use, I think it is more probable to say, as did Silvius and Ferraris, that a new consecration is not required to celebrate with such a chalice, because then the reason holds that a chalice, once consecrated, remains entirely consecrated thereafter as a single thing. But when a new gilding is done, new gold is added, which is not consecrated, immediately touching the Blood." FINIS.

[*Latin ed. p. 839*]

INDEX ALPHABETICUS RERUM NOTABILIUM, QUÆ IN HOC VOLUMINE CONTINENTUR.

A

ABBATES: Num habent facultatem capitula? Licet, XX. 31. Quibus Ordines conferre possunt, 117 ad 120.

ABBATISSA: Num potest irritare aut dispensare vota? V. 36. Num potest donare et dare licentiam donandi? XIII. 12, ad dubit. 5. In abbatissae electione, moniales sunt liberi, 22. Num abbatissa potest colloqui cum omnibus? XIX. 42.

ABLUTIO: Num requiritur trina in baptismo? XIV. 13.

ABORTO: Et ABORTIVUS. Num liceat esse causa abortus? VIII. 22. Num prægnantes, quae sibi abortum procurant, incurrant excommunicationem? 23. Num in dubio animationis feti? 24. Num liceat medicinam prestare matri? 25 et 26. Num baptizandi sunt feti abortivi? XIV. 20. Num episcopi et regulares possunt absolvere sæculares a censura per abortum incursa? XX. 100.

ABROGARE: Num decennium leges abrogentur, etiam ecclesiasticæ? II. 11.

ABSOLVERE et ABSOLUTIO: Num excommunicati teneantur verbarum absolventur? II. 21. Non debet absolutio prius non restituere, X. 105. De necessitate curarum absolutio, XVI. 5. Num absolutio conditionata sit valida? 6. Num danda moribundo si dat signa pænitentiæ? 35 ad 4. Num si alius testetur illum petiisse confessionem? 36. Si nullum dat signum? 37. Si in actu peccati sensibus destituitur? 38. De certitudine dispositionis ad

absolvendum? 118. Absolutus a reservato in bona fide a simplici confessario potest absolvere; a pænitentibus possint absolvi ante denuntiationem, etc., 176. Quis potest absolvere a censuris? XIX. 11. Si per sententiam generalem, etc., et an episcopus foris existens, etc., 12. Num requiratur præsentia censurati, de absolutione conditionata, et an absolvere liceat extra confessionem? 13. Requisita pro absolutione a censuris? 14. (Vide etiam XX. n. 4.) Num confessarius peccet absolvens in mortali? App. III. 13. Absolutio censurarum? 80. Sacerdos simplex quando potest absolvere? 130.

ABSTINENTIA a carnibus? XII. 14. A lacticiniis? 15. A larido? 5. A piscibus? 6 et 7. A carne suilla? 8. A sorbetto? 14. A lacticolatio? 3. Etc. Quænam dicitur parvitas materiæ in jejunio, et de illo qui pluries in die comedit? 20 et 21.

ABUSUS: Non est facienda restitutio si timeatur abusus? X. 116 ad 3.

ACCEPTATIO legis? II. 9 et 10. De acceptatione dispensationis? 48; donationis? X. 130. Et si est per nuntium aut epistolam? Ibid.

ACCESSORIUM in voto? V. 24.

ACOLUTHATUS quid? Potestas et officium? App. III. 56.

ACTUS: Debet stari pro validitate actus? I. 16. Num lex potest præcipere actus internos? II. 17. Num satisfieri possit pluribus præceptis, pluribus actibus, vel unico actu? 30 et 31. Actus hominis, et actus humani? III. 2. Actus voluntarius quotuplex? 3 ad 6. De actu libero? 7 ad 11. Actus a quo bonitatem aut malitiam sumunt? 19 et 20, et IV. 26. Num dicitur, actus indifferens? III. 21. De distinctione numerorum actuum internorum? 58 ad 61, externorum? 62 et 63. Num unico actu plura peccata committi possunt? 64. Si actus internus durat in effectu, unum constituit peccatum? 61. Quomodo uniuntur actus externi? 62. Qui furatur 100 aureos in 100 vicibus, quot peccata committi? 63.

ACTUS Fidei, Spei, an aliquando obligent? IV. 13. Num in contritione requiruntur? XVI. 13.

ACTUS christiani pro moribundis? App. II, § ultimo.

ADJURATIO quid? V. 20.

ADMINISTRARE et administratio sacramentorum lucri fine an liceat? IV. 45. Parochorum obligatio erga administrationem sacramentorum simulare an liceat? Append. III. 16.

ADMONITIO: Num liceat admonere complicem de pænitentis licentia? XVI. 152. Num admonere pænitentem sine eius licentia de errore in confessione commisso? 124. An intra confessionem in fine?

ADVENTITIA bona quænam dicuntur? X. 4.

ADVERTENTIA ad dubium an adsit lex? I. 4. Num ad peccatum? III. 24

et 25, et VIII. 8.

[*Latin ed. p. 840*]

828 INDEX ALPHABETICUS

Advocate. Whether clerics and monks can act as advocates, XIII. 69. When an advocate is obligated to defend, ibid. Regarding the causes and the salary, etc. 70. If the cause is unjust, etc., 71. Whether an agreement made during the progress of a lawsuit is permissible, and regarding the share of the lawsuit, ibid. Regarding an adulterer concerning restitution, X. 51. Adultery and the adulterer. If an adulterer kills a man in self-defense, to what is he obligated, VIII. 20. Whether adultery is a double sin if the man does not consent, IX. 16. A man who commits sodomy, ibid. To what is an adulterer obligated; and whether he must denounce himself, etc., X. 99. Regarding an adulterer, 101. Regarding what is to be done if there is doubt whether the child is his, 102. Regarding what is to be done if the wealthy give to hospitals, 103. Whether a spouse is obligated to separate because of adultery, XVIII. 93 and 94. Regarding the right to revoke an adulterer, 95. Things that are equivalent, II. 78 to II. Equivocation and mental reservation, whether permissible, V. 15 and 16. Etias. What is required concerning marriage, XVIII. 66. Regarding irregularity, XIX. 130. Regarding Orders, App. III. 43 and 44. Affects to be suggested to the dying, App. II. § III. During the agony, § VI. Affinity concerning marriage, XVIII. 67. Regarding the impediment of affinity to petition, 68. Aggressor, see defender. Agony. Warnings for the agony, Appendix II. § V. Affects for the agony, § VI. Whether a game of chance is permissible for clerics, X. 219. Whether for monks, 220. For bishops, 221. Alienation of ecclesiastical goods, when is it permissible, 61. Solemnities required, 62. Alimony. Whether a man is obligated to provide for his wife, XVIII. 51. Allicere. Donation in simony, IV. 41 and 44. Donation, if the end of the donor does not have effect, it will be void, X. 132. Altar. If a priest does not celebrate in a privileged altar, is he obligated to make restitution, XV. 75, in fine. In a privileged altar, when indulgences are granted, 83. Portable altar for regulars, XX. 121. Altar required for celebrating, Appendix III. 116. Amens. Whether Confirmation should be given to the insane, XIV. 49, in fine. Whether Extreme Unction should be given, XVII. 11. Whether there is an obligation to render conjugal duties to the insane, XVIII. 49. Whether the insane are irregular, XIX. 112. Friend. Whether he can cede a tithe. VIII. 1 to 2. Love of God, IV. 9 to 13. Love of neighbor, 14 and seq. Love of parents, VII. 1 and seq. Whether predominant love is necessary for confession, XVI. 14 and 15. Whether those who practice love can be absolved, Appendix IV. § 1. no. VI. Animadvertere. The bishop concerning enclosure, etc., XX. 80. Cases in which the bishop can punish regulars, 82 and 83. In monasteries where 12 religious do not live, etc., 88. Animals.

A society of animals with a pact for the safety of the head, whether it is permissible, X. 226. Regarding which animals their flesh is permissible during fasting, XII. 2. Regarding which animals are caught in hunting, X. 71. Direction of souls for the confessor concerning supernatural graces, Appendix I. 23 and 24. Animation of the fetus, VIII. 22. Animus. He who swears without the intention of swearing, how does he sin, V. 17. What if someone vows without the intention of obligating himself, 21 to 23. What if someone contracts without the intention, X. 122. Intention of initiating within a year is required for a benefice, XIII. 42. What if someone receives with a doubtful or conditional intention, 43. Whether he who accepts it with the intention of abandoning it later, sins gravely, 44. Intention of being ordained is required, App. III. 33 to III. Annulus sent by the sponsor, whether it induces the obligation of betrothal, XVIII. 6. Annus Jubilæi. See Jubilee. Antichryseos contractus, commonly called "godere," whether it is permissible, X. 182. Appendix on private oratories, VI. after n. 38. Applicare and application. For whom the pastor must apply the Masses, XV. 72. For whom others are benefited, and for the chaplains of nuns, etc., and whether for others, or to abstain, etc.; and if sick, whether they are obligated to have it celebrated by another. For whom the application of the conventual Mass, 73. What if a religious applies a Mass against the will of the prelate, 79. Whether a habitual application is sufficient, 80. Whether it is confused or conditional, 81 and 82. On the feast of All Souls, whether there is an obligation to apply the sacrifice for the dead in general, and regarding the privileged altar, 83. Application of the Mass regarding the parish priest, App. III. 109. Approbatio and approbatus. Regarding the approval of the confessor, XVI. 74 and 75. What if it is unjustly revoked, 75. Whether a simple priest can absolve from venial sins, etc. 76. Whether

[*Latin ed. p. 841*]

RECORDS OF NOTABLE MATTERS. 829: A parish priest may admit priests from another diocese, 77. Whether of the same diocese, 78. From which bishop must approval be obtained, 79. Concerning the approval of religious orders regarding themselves, 73. Regarding laypersons, 80. Everyone may confess before those who have been approved, 86. Whether a simple priest may absolve a dying person in the presence of one who has been approved, 93. Exceptions, 94. The approval of the confessor of nuns, XX. 67. Sensible aridity, Appendix I. 8. Substantial aridity, or dryness of spirit, 9. Arrears in a sale, X. 166. Hairdressers who create false hair for women, treatise end. 36. To look at shameful things, etc., at times, is a sin, IX. 8. Whether the sight of shameful things in a church is sacrilegious, IV. 39, and IX. 22. Contracts of insurance, what they are, X. 231. The assistance that parish priests are bound to provide to the dying, VII. 45 to 2. The assistance of a parish priest in the case of a sinful marriage, what sin it is, XVIII. 29 to 1. If the parish priest objects, to 4. If he assists in the sin, to 5. If

the marriage is ratified by dispensation, to 6. Concerning the assistance of witnesses and the parish priest, 70, 71, and 73. Assistance to the dying, App. III. Observations concerning the last sacraments, S IV. Warnings for agony and death, S V. Feelings for agony and expiration, S VI. Signs of death, S VII. Prayers, Christian acts, and blessings, S end. Whether natural and judicial astrology is permitted, IV. 34. Attention. What kind of attention is required when hearing Mass, VI. 28. What if someone recites the Office while hearing Mass, etc., 29. See also under the word Mass. Concerning attention in the sacraments, XIV. 1. Whether internal attention is required for the Hours, etc., App. III. 75. Whether a beneficiary reciting without attention is bound to make restitution, 61. Attrition. Whether attrition without predominant love is sufficient, XVII. 14, 15, and 16. Whether it is sufficient out of fear of temporal punishments, 17. Authority. Whether marriages can be validly contracted by one's own authority, XVIII. 26. Whether a divorce can be granted, 97. To hear. What sin is it to hear obscene speeches and indecent comedies, IX. 10. To hear detractions, XI. 17. Barbers. Petitions to be made to them, treatise end. 36. Baptism. How many kinds are there, XIV. 7. Whether it is permissible to baptize remotely, 8. Concerning the immediate baptism. Whether the mother can begin so that the child may be baptized, 9. Whether it is permissible to baptize the child in the womb, etc., and in which member, 10 to 12. Whether a triple ablution is required, 13. The form of baptism, 14. The minister, 15 and 16. Concerning those who are baptized externally, 17. Whether a delay in baptism is a sin, 18. Concerning baptism at home, Ibid. and 30. Concerning those who are rebaptized, 19. Concerning baptism under a condition, 23. Whether those exposed under a condition are to be baptized, 24. Concerning baptism conferred by laypersons, 25. By heretics, 26. Concerning doubtful baptism, 27. Disposition to receive baptism, 28. Ceremonies of baptism, 29. Where it should be conferred, 30. As far as the godfather is concerned, see Godfather. Blessing of the Chrism, XIV. 40. Of marriage, XVIII. 53 to II. Blessings at the point of death, App. 2, page 743. Concerning the cucullo (hood) of Saint Mary of Carmel, Ibid. page 745. Concerning the cucullo of Mary of the Seven Sorrows, Ibid. page 746. Concerning the cucullo of the Immaculate Mary, Ibid. page 746. Beneficiaries and the benefice. Whether a beneficiary has dominion over the fruits, X. 7. Whether he who receives the fruits from a beneficiary gravely sins, and whether he is bound to restore them to the poor, 8. The qualities required in a beneficiary, and whether he should have the intention of initiating himself within a year, XIII. 42. What if someone receives a benefice with a doubtful or conditional intention, 43. With the intention of relinquishing the benefice, 44. Obligations of beneficiaries, and whether they can live off the fruits, 45. In what manner the fruits should be distributed, 46 to 48. Diversity of benefices, 31. Whether they should be conferred on the more worthy, 33. Whether the more worthy should be presented, 34. Whether the election of a less worthy person is valid, 36.

Whether the elector must restore, etc., 37. If a less worthy person is present, does it sin, 38. Whether the examiners sin at times, 39. Whether several benefices can be conferred on one person, 40 and 41. Whether the sale of benefices is permitted, IV. 46. A simoniacal election to a benefice is null. 52. And if the triennial prescription is present, ibid. Deprivation and inability due to simony, 53. Whether a sentence is required, 54, and XIII. 58, concerning the end. How benefices are lost, ibid. For whom a beneficiary should offer Mass, whether he can abstain; what if he is sick; XV. 73. Concerning benefices with respect to excommunicated persons, XIX. 19. With respect to irregulars, 76 and 77. Beneficiaries concerning the canon and the forum, XX. 22. The bishop can unite benefices, 71. Whether they are bound to restore the fruits if the beneficiaries do not recite, etc., App. III. 61. What should be done, 62. What if they have other obligations, 63. Whether excommunicated persons, etc., and those who recite without internal attention.

[*Latin ed. p. 842*]

830 INDEX ALPHABETICUS: Concerning the obligation to make restitution of fruits, 64. Whether those who neglect their duties within the first six months, and those who omit the recitation of the Divine Office without just cause, are obligated, 65. Whether one who does not receive the fruits is obligated to perform the Divine Office, 66. If the benefice is small, 67. Whether a canon who misuses the fruits of his benefice and does not chant the Divine Office is obligated to make restitution, 68. Concerning simony, IV. 44. Concerning usury, X. 143. What is bestiality? IX, 27. Whether carnal copulation with a demon constitutes bestiality, 28. Concerning bigamy, XIX. 138 to 141. Concerning the privilege of a bishop with regard to bigamy, XX. 50. Concerning the privilege of religious, 105. Blasphemy, when it is said, V. 1. Whether it is blasphemy to curse a region, a creature, or the world, and to utter the words "atta" and "potta," 2. Whether it is blasphemy if someone curses the faith of another, 3. Whether cursing the dead is blasphemy, ibid. to 11. Blasphemy in relation to heresy, 1 and XIII. 77. Goods. Whether there is an obligation to relinquish, omit, etc., in order to avoid scandal, IV. 28. A vow must be made concerning the better good, V. 24. The goods of children, whether acquired by inheritance and quasi-inheritance, X. 2. Goods acquired through inheritance, 3. Goods acquired through acquisition, 4. The goods of wives, 5. The goods of clerics, 6, 7 and 8. To whom are uncertain goods to be restored? 67. Who can make the settlement for them? 68. Concerning goods found, 69. Concerning a treasure, 70. To what is one obligated if he receives from a thief an item mixed with his own? 75. What if the item increases in price or has increased in price? 78. What if it was perishable? 79. Whether an item taken by a thief can be restored to its owner, 53. What if the owner recovers it from a buyer? 66. What if it is sold? 107. Whether an item should be preserved for the owner even if it endangers his own property, 137. To whom is an item sold to two

people? 190. If an item sold perishes, does it perish to the buyer? 191. Cessio bonorum (cession of goods), 117 to 6. The obligation to encumber goods with liens, 237. Whether the alienation of ecclesiastical goods is permitted, XIII. 61. What is required for it? 62. Ecclesiastical goods enjoy exemption from the secular forum, XX. 20. Also, religious with their novices, etc., 21 to 24. How many sins does one commit by throwing away the Breviary? App. III. 69. Bulls of Benedict XIV concerning fasting, XII. 6. Concerning the negotiations of clerics, X. 192. Concerning a confessor who inquires about accomplices, XVI. 43. Concerning a confessor who is an accomplice in a grave sin, 93. Concerning the Jubilee, 64. Bulls of Nicholas V concerning tithes, X. 197. Of St. Pius V, 198. Bulls of Gregory XV concerning those who are solicitous, XVI. 165. Bulls of Clement concerning heretics, XIX. 53. Concerning those who support them, 54. Concerning prohibited books, 55 to 62. Concerning other cases of bulls, 63. Bulls concerning the power of confirmation delegated to priests, XIV. 44. Concerning Mass for the people, XV. 72. Concerning an extraordinary confessor, XVI. 89. Examination of cloistered confessors, ibid. Concerning the causes for dispensation in marriage, XVIII. 87. Concerning women who violate their enclosure, etc., XIX. 47. Ceremonies of Baptism, XIV. 29 and 30. Of Confirmation, 50 and 52. What is the sacred cloud in contemplation? App. I. 15. A chalice and paten are required for celebrating, App. III. 117. Exchange (Cambium), how much is permitted and what is permitted? X. 203. Whether one who receives counterfeit money can spend it, 204. Canon. Of what privilege does a canon enjoy? XX. 19 to 24. Canonical portion. Who is obligated to pay it? XX. 93. Canon. The residence of a canon, XIII. 50. Penalty, 51. Excuses, 52 to 57. Whether a penitentiary is obligated to make restitution of his prebend, App. III. 68. A chaplain can retain a portion of his stipend, XV. 67. For whom should he apply the Mass? Whether he can abstain, and what if he is ill? 73. Whether he can change the church or altar; and if it is privileged; whether he sins if he celebrates through others? 75. Whether, if revenues are lacking, a chaplain can diminish the number of Masses from his own resources? 78. Whether chaplains can absolve soldiers in their stations? XVI. 85 in fine. Whether they can assist in the marriage of soldiers, XVIII. 72 in fine. Whether a chaplain is free to celebrate in another church, XX. 60. Capital. See Sors. Safe head (Caput salvum). Whether a contract made with a safe head is permitted, X. 226. Prison and being detained in prison. Whether those in prison are obligated to take steps to be released from their bonds so that they can attend to sacred things, II. 21 and VI. 39 to 2. Whether they can receive Communion during Easter, XII. 41. Whether a defendant can break out of prison and bribe a guard, and whether others can assist him, XIII. 87. Whether cardinals can choose a confessor for themselves, XVI. 85. Flesh. Which meats are permitted during the time of fasting? XII. 2. Whether those dispensed from meat can eat fish on days of fasting, 6 and 7. Whether meat of swine is permitted to those dispensed from meat, 8.

Whether one sins if he eats meat frequently, and concerning the smallness of the matter, 20 and 21. Whether cheese is prohibited in a collation, etc., XII. 19.

[*Latin ed. p. 843*]

RECORDS OF NOTE. 831 Chastity. Does a vow of chastity dissolve betrothals, XVIII. 25. Bishops and religious superiors dispense to spouses who have taken a vow of chastity, 54 ad VI. Are subdeacons bound by a vow of chastity, App. III. 59. Are those who ignore this obligation excused, and those who are ordained before puberty or out of fear, ibid. Kosso. If a penitent is deaf, XVI. 155. Cases of solicitude, 181 and 182. Can a bishop absolve from papal reservations outside of confession, XX. 32. Can he absolve from reservations made by other bishops, 35. Can he absolve from reservations made after a council, etc., 36. Concerning an accomplice in a grave sin, 37. Concerning cases involving the Bull of the Mass, 38. Can a dying person be absolved from papal reservations by any confessor in the presence of a bishop, 45. Concerning the six episcopal cases, and especially concerning the striking of a cleric, 46 ad 48. From which cases can religious superiors absolve their subjects, 95 ad 97. From which cases can secular priests absolve, 99. Can reservations made by bishops be dispensed, 100 ad 101. See also Reservation. Catalog of decrees of the Holy See concerning the Mass, XV. 88. Cause. Causes excusing from confessing before Communion, XV. 24. Concerning the condition of causes regarding betrothals, etc., XVIII. 2. Causes for granting a dispensation from marriage, etc. 84. Causes for divorce, 91 ad 94. What if the cause for censure is false or doubtful, XIX. 10. Causes for communicating with an excommunicated person to avoid scandal, 22 ad 26. Causes excusing from reciting the Divine Office, App. III. 76. Celebration and Celebrating. What if someone remembers a sin or censure while celebrating Mass, XV. 25. How is the word "Quamprimum" understood, 30. And are those who remember a sin after consecration obligated, etc., 31. Is the celebrant sacrilegious, 32. Is a priest forbidden to celebrate Mass without fasting for a Mass of Viaticum, 51. What if a priest remits the portion of the Mass that is offered, 69. Who celebrates Mass for a sinner, 84 ad 86. Inability of those who are soliciting to celebrate Mass, XVI. 183. Concerning a dispensation for a chaplain to celebrate Mass in another church, XX. 60. Concerning celebrating Mass after midday, 61. Concerning celebrating Mass in chapels, 62. Where can a bishop celebrate Mass, 63. Can he dispense for celebrating Mass in a private home, 64. Concerning the manner of celebrating Mass, the religious are subject to the bishops, 75. Can religious orders admit outsiders to celebrate Mass in their churches, 77. Concerning celebrating Mass before a parochial Mass, 76. (See also decrees on this subject, XV. 88 ad XXI.) How many sins does one commit when celebrating Mass in a state of mortal sin, App. III. 13. The obligation of priests to celebrate Mass, 111. When is it permissible to celebrate Mass, 113.

Where is it permissible, 114. What if the church is polluted, 115 et 128. What is required to celebrate Mass, namely the altar, etc., 116 ad 122. Concerning the celebration of a newly ordained priest, 123. And concerning the three Masses assigned to him, 124. Mass to be celebrated solemnly, briefly, etc., 125. Votive Mass, 126. When is it permissible to celebrate Mass more than once in a day, 127. Censures. Can censures be absolved by the words "I absolve you," XVI. 5. Which censures can be absolved during a Jubilee, 72. Can a cleric absolve in cases of necessity, 73. Can a simple confessor, at the point of death, be before a superior, 96. Can he absolve from papal censures, 97. Are those who are ignorant of papal and episcopal censures excused from them, 129. Does a pilgrim incur reserved censures if he sins in another diocese, 138. When is a censure a sentence pronounced or to be pronounced, XIX. 2. Who can pronounce it, 3. What is required for a censure to be binding, 4. Can bishops, kings, and communities do so, ibid. Can bishops outside their diocese, and can those who are absent from their subjects, pronounce censures, 5. Can a pilgrim be censured, 6. What sin is required for a censure to be imposed, and do those who command and those who are consulted incur it, 7. Is one censured for ignorance or fear, and is one censured for sins committed in person, 8. Concerning the solemnity required for a censure imposed for ignorance, 9. What if the cause is false or doubtful, 10. Concerning censures regarding the conception of the Blessed Virgin, 31 et 32. Is irregularity a censure, 78. Can censures outside of confession be absolved, XX. 4. Concerning a bishop's censure regarding a cloister, 80. From which censures can religious absolve laics, and from the six episcopal censures, from the striking of a cleric, and from abortion, 100. Concerning censures in general, App. III. 77 ad 80. Concerning excommunication, 81 ad 83. Concerning suspension, etc., 84. Concerning deposition, etc., 85. Concerning interdict, 86. (But see what is said more fully on this subject, XIX. 68 ad 70.) Certainty of disposition for Communion, XV. 34. and for confession, XVI. 118. Cessation and Ceasing. What is a cessation from the divine things, XIX. 71. (And see also App. III. 86.) In how many ways does the privilege cease, XX. 14. How through revocation, 15 ad 17. Character in the sacraments, App. III. 24. Charity towards God, IV. 9 ad 13. The order of charity, 14. Are we bound by charity when there is danger of sinning: are bishops and pastors in a grave necessity, etc., and at what time, 16. Concerning priests, etc., ibid. (And see also XVI. 125.) Charity towards enemies, 16. Concerning their salutations, ibid. Concerning the remission of injury, 17. Alms, 18 et 19. Concerning fraternal correction, 20 et seq. Does charity excuse from labor during a feast day, VI. 16 et 17. Concerning a pact in a mutual debt due for charity, X. 161. Charity of the confessor in

[*Latin ed. p. 844*]

832 INDEX ALPHABETICUS including penitents, XXI. 1. In hearing confessions, 2. In admonishing, 3. In requesting and arranging, 4. Documents.

Is it lawful for a cleric to play with documents, X. 219. For monks, 220. For bishops, 224. Does swallowing a document break the fast, XV. 42 and 43. Is one who reads a document of confession bound to seal it, XVI. 151. Can a confessor present a written confession, etc., 162. Concerning a written request in confession, 166. Surgeons. Petitions should be made directly to them, tr. ult. 33 to V. Chocolate. Is it permissible during the time of fasting, XII. 15. Choir. Is a cleric who does not sing in the choir bound to make restitution of his prebend? App. 3. 68. Concerning pronunciation in the choir, 73. The Order of Hours in the choir, 74. Chrisma is the substance removed for Confirmation, XIV. 39. Should it be blessed, and by whom, 40. Christians with regard to redemption from captivity, X. 16. Chrisius. How is it present in the Eucharist, App. III. 101. A chirograph concerning the purchase of something, X. 179. Food. Does swallowing remnants of food left in the mouth break the fast, XV. 36. If food is not digested, does it impede Communion, 44. Circumcision, was it a sacrament, App. III. 2. Circumstances aggravating sins to be confessed in confession, XVI. 29. Concerning matters related to the seal, 153 to V. Clandestine. Is a marriage celebrated clandestinely before a priest who objects valid, XVIII. 29 to 4. Concerning clandestine marriages lacking proclamation, 55. Concerning clandestine marriages lacking the presence of a priest, etc., 70 and 71. A cripple, when is he irregular, XIX. 119. Cloister. The power of the bishop concerning cloisters, XX. 66 and 80. Clauses in the bull of Gregory XV concerning those who solicit entrance into religious life, XVI. 166 and following. Sacred clauses of the Penitentiary concerning the dispensation of marriage, XVIII. 87. Clauses added to privileges, XX. 5. The enclosure of nuns, XIX, 33 to 39. Concerning conversation with nuns, 40 to 45. Concerning the enclosure of religious men, 47. See also Nuns. Cleric. The hunting of clerics is forbidden, X. 72. Is it lawful for them to engage in business through others, or for some benefit, 192. Can they buy sheep to sell, marked as their own, 193. Can they buy to sell at a higher price; and can they sell wool to buy cloth, and what if they are in need, 194. Can they act as guardians or factors, 195. Can they play games of chance, etc., to help others, 219 and 221. Can they practice arts and professions, XIII. 60. Can they act as lawyers, 69. Can they bring accusations, 74. Clerics who are brawlers, when should they be avoided, XIX. 16 and 48. Are clerics, by divine law, exempt from secular power, XX. 18. Do they enjoy the privileges of canon and forum, 19. Concerning their goods, 20. Concerning benefices, 22. Concerning tonsures, 23. Concerning those who abandon their habit, 24. Concerning the immunity of sacred places, 25 to 28. Do married clerics enjoy privileges, 21. Clerics who are brawlers, when do they incur excommunication, 48. Does one who gives poison to a cleric incur censure, ibid. Spiritual relationship, how is it contracted, XIV. 33. Concerning impediments to marriage due to spiritual relationship, XVIII. 62 to IV. Cohabitation. Are spouses bound to cohabitate, XVIII. 51. A late snack, is it permissible during the time of

fasting, XII. 16 to 19. Commodatum, what is it, X. 135. The advantage of chance in a society, X. 224. Is Communion with excommunicated persons permissible, XIX. 15. In public places, 20 to VI. In civil matters, and in which, 21. When is it a mortal sin, 22. Excusing causes, 23 to 26. The communication of privileges among religious, XX. 9. Communion and to communicate. To whom does one doubt about fasting, I. 19. Concerning Paschal Communion, XII. 39. Is one who neglects it bound to receive it as soon as possible, etc., 40. How are those detained in prison and excommunicated to receive it, 41. Should it be done in the parish, ibid. Who is exempt, 42. At what age should children receive Communion, 43. When should adolescents, 44. To which sinners should Communion be denied, XIV. 5, and XV. 15. Does one who receives Communion with actual venial sin commit a venial sin, XV. 7. The obligation of pastors concerning the Eucharist, and the offering of Communion; and can all priests and religious offer it, 8. Can deacons, 9. Can priests, out of devotion, receive Communion from themselves, 11. Is it permissible to offer Communion with the posterior fingers, 13. Is it permissible in both hands, 11. Is it permissible to offer to adolescents with the posterior fingers, 14. To those condemned to death, 15. In a Mass for the dead, 16. At what hour and day can Communion be given, 17. Confession preceding Communion, 22. If one remembers a sin after confession, can he receive Communion, 23. What necessity ex-

[*Latin ed. p. 845*]

REMARKABLE MATTERS. 833, 24. What if, while celebrating, one recalls a sin? 25. If a confessor is lacking, and how this is to be understood. 26. If the sin is reserved. 27. If a sin is attached an excommunication. 29. In the first place, how this is to be understood. 30. Does it obligate after consecration? 31. Does it obligate those who commit sacrilege? 32. Does it obligate the laity? 33. If one doubts about a sin, can he receive communion? 34. If, after communion, one vomits, is he absolved from guilt? 45. Does impurity impede communion? 56. Does marital intercourse? 57. Does leprosy, or menstruation, or immodesty of the breast? And concerning a priest who communes outside of Mass. 58. Decree concerning administration monthly. XVI, 2. When can communion be given by religious? XX, 123. Concerning the frequency of communion, Appendix I, 29. If one administers communion to a dying person, does he sin mortally? App. III, 13. See also Eucharist and Viaticum. Can a community be censured? XIX, 4. To change and the change. Can a change of vow be made by the authority of the Church? V, 38. Can a change of penance be made? 65. Works of the Jubilee, ibid. Can a bishop change last wills? XX, 68. Is it permissible to change an office? Appendix III, 70. Can a complex sin be and should it be manifested in confession? XVI, 40. If a confessor inquires about the name of an accomplice, what penalty does he incur? 41. Concerning the confession of an accomplice in a heinous sin. 43. Is there a seal concerning

the sins of an accomplice? 152. Can one be admonished about a dispensation of penance? ibid. Can a bishop absolve a confessor who absolves an accomplice in a heinous sin? XX, 37. Can restitution be made by a bishop? XX, 69. Conception. Concerning censures regarding the question of the Conception of the Blessed Virgin. XIX, 31 and 32. Are councils under the Pope? II, 34 and 35. Concupiscence. When does it constitute a sin? III, 15. Condition. Is it permissible to confer sacraments under a condition? XIV, 3. (And see also App. III, 3. What is required in order to be permitted to confer Baptism under a condition? 23. Is a conditional application valid? XV, 32. Is a conditional absolution valid? XVI, 6. Can it be given to the dying if they have given signs of penance? 36. Can it be withheld? 37. Can a conditional absolution be given to a sinner who has lost the use of his senses in the act of sin? 38. Is a conditional penance permissible? 52. A legacy under a condition, if one marries or if one does not marry, is it due? XVIII, 12. Concerning consent under a condition in marriage, 33 and 34. The condition of servants concerning marriage, 62. Concerning the conditional absolution from censures, XIX, 13. Conductor. See Location. Concerning those who fear about confessions, 10. Is it permissible to inquire about the name of an accomplice? XVI, 41. If he absolves an accomplice in a heinous sin, does he incur excommunication? 95. Concerning confessors of nuns, 89. Can a simple confessor absolve from reserved sins before a superior? 96. Can he absolve from papal reservations? 97. Duties of confessors, 99. He is bound to examine the penitent, 102. And how? 103. He must instruct and prepare him, 105. He must admonish, 106 and 107. What if the admonition is not helpful? 108 to 112. When must a confessor absolve? 117. Concerning certainty of disposition, 118. If the penitent has the opinion that it is probable that he is absolved, to what is the confessor bound? 119. If he conceals or denies a sin, 120. Concerning repairing errors, 121 to 124. The obligation to hear confessions, 125. Can a confessor admonish within the confession? 156 in end. Can he use knowledge for the governance of the penitent with a burden? 159. Can he use it to avoid damage to himself? 161. Can he present a schedule of confessions? 162. If the penitent is burdened, etc., 164. Can bishops choose confessors for themselves? XVI, 35. Is he who is consulted about a confession bound by a seal by the permission of the penitent? 149. If the penitent returns with a bad conscience, can the confessor excuse himself from hearing him? 160. Can he absolve from censures outside of confession? XIX, 13 in end. Every confessor can absolve from heresy one who has been absolved by a bishop in the external forum. XX, 39. The power of prelates in choosing confessors, 65. To remove an extraordinary and an ordinary confessor, 80, concerning the middle. The obligation of a confessor to inquire about and prepare the penitent, XXI, 4. General and particular remedies for penitents, 5 and 6. How should a confessor behave with occasionists, treatise end, 1 to 7. With habitual sinners and relapsed sinners, 8 to 15. With those who are being ordained, especially women, 16

and 17. Petitions to be made to the ignorant, 18 to 31. To young people who adorn themselves with women's attire, 36. How should a confessor behave with children and girls, 37 to 41. With pious people, 42 and 43. With the deaf and the hard of hearing, 44 and 45. With the dying, 46 and 47. 53.

[*Latin ed. p. 846*]

834 INDEX ALPHABETICUS

With the damned, 48 and 49.

With those vexed by a demon, 50 to 53.

With women, 54 and 55.

Concerning supernatural graces, App. I. 23 and 24.

Concerning the restraint of lust, 25 to 27.

Concerning frequent Confession and Holy Communion, 28 to 36.

How one ought to direct religious life towards perfection, 37 and 38.

Notable admonitions for confessors, App. I. § 1, page 703.

Confession. Whether one who confesses within the Mass is absolved, VI. 31.

Whether one can omit the Sacred Sacrament in order to confess, 43.

Whether Confession is to be given before Holy Communion, XV. 22 to 34. See Holy Communion.

Whether a valid and informed Confession can be given, XVI. 18.

Confession ought to be vocal, 27.

Secrets, ibid.

Truth, and whether he who lies in Confession sins. 28.

It ought to be complete, 29.

Whether there is an obligation to confess doubtful sins, 30 to 32.

Whether doubtful sins are to be confessed, 33.

What if they become certain afterwards, etc., 34.

Whether physical impotence excuses from Confession, and whether, besides an interpreter, it is to be confessed, 35.

Concerning the dying person who gave signs through witnesses, 36 to 38.

Whether moral impotence excuses from Confession, 39.

Whether the accomplice ought to be made manifest, etc., 40.

Whether the name of the accomplice can be inquired, 41.

Concerning the renewal of Confession, 43 to 46.

In case of doubt concerning the validity, whether Confessions are to be repeated, 46.

The necessity of Confession during a Jubilee, 64 to 1.

Whether a simple priest ought to make himself available to hear Confessions, 126 and 127.

He reads the Confession in writing under seal, 151.

Concerning the confession slip, 162.

Whether it is permissible to give an admonition within Confession, 156 in fine.

Whether the knowledge of Confession can be used for governance, etc., 159.

Whether one can take precautions against any harm, 161.

Whether a bishop can absolve from ecclesiastical censures without Confession by virtue of canon 20, 32.

To whom can religious, novices, and servants reveal their sins, 110.

To whom can religious of other orders reveal their sins, 111.

Concerning the Confession which a physician ought to impose, tr. ult. 33 to V.

Concerning changing confessors, 43.

Confession concerning spiritual persons, App. I. 28.

Confidence.

Whether he who sins in confidence of the Jubilee can be absolved from reserved sins, XVI. 69.

Whether he who sins in confidence of a dispensation, 144.

Confirmation.

Concerning the material cause of Confirmation, XIV. 39.

Concerning the immediate cause, and whether the extension of the hand is a material cause, 41.

Whether the bishop ought to anoint with the right hand or with an instrument, 42.

Concerning the form of Confirmation, 43.

Concerning the minister, and whether a simple priest can be the minister, 44.

What if the one to be confirmed is an outsider, 46.

Concerning the obligation of conferring Confirmation, 46.

Concerning the obligation of receiving it, 47.

Whether he who receives Holy Orders ought to be confirmed, 48.

And see App. 33, 1.

Whether it is permissible to confer Confirmation on the insane and infants, 49.

Concerning the ceremonies of Confirmation, 50.

Concerning godparents, 51.

Concerning other ceremonies, 52.

Concerning the effects, 53.

Congregation.

Concerning the congregation of girls, VII. 55, concerning the middle.

Of clerics, 57.

Married couples.

Whether donations between married couples are valid, X. 129.

Whether a spouse sins if he withdraws from procreation, XVIII. 40.

Whether it is permissible for a conjugal act to take place during pregnancy.

Whether it is forbidden by a vow or by incest, 41.

Whether it is permissible for married couples to have embraces and delights, 42.

When is one obliged to pray, 43.

What if a spouse hinders procreation, 50.

Whether one ought to be separated from an adulterer, 93 and 94.

Whether he can be received back, 95.

Whether a divorce can lead to a religious vocation, 97.

Whether a spouse can enter a religious order, leaving the other in the world, XIX. 41 and 42.

Connected.

What is to be understood by these terms, II. 78 to III.

Conscience.

It is the first rule of our actions, I. 1.

When is it vincible, 4.

Perplexed, 7.

Scrupulous, 8.

Doubtful, 12.

Probable, 21.

Consecration.

Whether consecration is permissible in either species, XV. 3 and 4.

What is one bound to do after consecration if he remembers a sin, 31.

Consent.

Concerning scrupulous individuals, I. 9.

Concerning mortal sin, III. 24 to 46.

What effect has a corrupt consent in regard to sin and restitution, IX. 14, and X. 91.

The consent of the creditor excuses from restitution, 116 to 2.

The presumed consent of the bishop for Confession, XVI. 33.

The dissolution of betrothal by mutual consent.

What about minors, is it valid, 31.

Divorce by consent, 91 to III.

Concerning the consent in marriage, is it valid, 14.

Whether it can be given by a procurator or by letter, 32.

Concerning conditions, 33 and 34.

Whether he who falsely contracted marriage is bound to ratify it, 79 and 80.

How is consent to be demanded, 82.

Guardian.

Regular canons have the privilege of choosing a judge as guardian, XX. 90.

Counsel and advisor.

Whether it is permissible to give counsel, even if it is the lesser of two evils, etc., IV, 30 and X. 47.

Whether he who gave counsel which caused damage is bound to make restitution, X. 44 to 49.

Whether, in doubt, whether the counsel was the cause of the damage, 45.

Whether he who retracts the counsel, 48.

Whether he is bound to provide a seal who is required for counsel by a confessor with the penitent's permission, XVI. 149.

Whether the consultee is the penitent himself, 150.

Counsel concerning an incursion of censures, XIX. 7.

[*Latin ed. p. 847*]

RERUM NOTABILIUM. 835 Custom. Conditions required for customs, II. 79. On desuetude, 30. If any custom is disapproved, 81. Whether general laws are derogated, etc., 83, in fine. Completion: Whether marriage can be consummated on holidays, and whether without a blessing, XVIII. 53 to II. Contemplation and one's own progress, App. I. 6 and following. Contemplation affirmative and negative. 12. What is meant by formal contempt, II. 14 in fine, and III. 68. What are the things meant by contentment, II. 78 to IV. To contract and to be bound by a contract. Is guilt required for restitution in contracts, X. 38 and 39. What if someone contracts without the intention of contracting or obligating oneself, 122. On scandalous contracts, 123. When does fraud or error invalidate a contract, 124. When does fear? 125. On a contract without formalities, 126. On the three contracts, 227. In what does contrition consist, XVI. 8. From what motive should it be elicited, 9. When is it necessary, 10. Is it necessary in death, 11. Is general contrition sufficient for a sinner, 12. Is it sufficient for a minister in mortal sin, App. III. 12. What is an insult, and concerning the restitution of honor, XI. 3. Excusing causes, 4. Is conventional penalty due before sentence, 2. 27. In

a loan, X. 156 and 157. For whom are conventional Masses to be offered, VII. 29, in fine, see Note. Regular convents, example, II. 39. Concerning a convent where 12 religious cannot be sustained, XX. 88 in fine. On establishing, abandoning, or transferring monasteries, 88 and 89. Those living collegially can be absolved by the bishop, due to the offense of a cleric, XX. 47 in fine. Cooperating, Cooperator, and Cooperation. Formal and material cooperation, IV. 31. When is it permissible, 32. What penalties do those cooperating in a duel incur, VIII. 28. In theft, to what are they bound, X. 42 and following. If several people set fire to a house, are all bound to restore the damage in solidum, 55. Is one excused from sin and restitution who cooperated out of fear of serious damage to another, 56 and 57. Who among those cooperating is first liable to usury, 163 and 164. Does the conjugal act impede Communion, XV. 37. Does the corporal used for celebrating need to be blessed, etc., App. III. 119. Correction and to correct. There is an obligation to correct even the ignorant, IV. 20. Who is excused from correction, 21. Are pastors bound to correct with the danger of life, 22, and VII. 30 to 32. Are confessors, IV. 22 in fine. Are prelates regular, ibid. and XIII. 2 in fine. Should correction be given before denunciation, and can a religious be denounced without correction, 74, see Note 4. What are called correlatives, II. 78. Creatures. Is it blasphemy to curse them, V. 2. Creditor. Should burdensome creditors be preferred, X. 108. If all are burdensome, 109. Which debts must be satisfied first, whether those arising from delict or from contracts, 110. Should certain creditors be preferred, 111. Should hypothecary creditors be preferred, and are personal creditors preferred, 112. If one part is remitted to one creditor, to what are the others bound, 60. If a murderer intends to harm the creditor, to what is he bound, 87. If the creditor demands the full debt, etc. 114. He who restores to the creditor what belongs to the creditor, is excused from restitution, 116 to 1. Consent of the creditor, 2. What if the creditor is in need, 118 and 120. To grow. To what does a thing unjustly retained grow or decrease, X. 78. Crime. See Delict. Cross. Is a cross with a crucifix required for celebration, App. III. 122. Sins. Can the legislator obligate under a light matter when it is grave, II. 14. Does theological guilt obligate to restitution, X. 38. Does juridical guilt, 39. Does venial guilt, 40. Is juridical guilt sufficient in contracts, 41. Guardianship and Guardian, X. 234. Curialists are irregular, XIX. 143. Are custodians excused from Mass, VI. 39. If they do not denounce, to what are they bound, XIII. 73. Is it permissible for the accused to corrupt a custodian, 87. D. To adjure a demon. V. 20. To what sin is intercourse with a demon reduced, IX. 28. Should condemned persons communicate, XV. 15 in fine. How should the confessor behave with them, and if they are persistent, (r. ult. 48 and 49.

[*Latin ed. p. 848*]

336 INDEX ALPHABETICUS. Damage. Whether a law obliging to a

grievous damage is valid, II. 18. Whether it is licit to rejoice in a damage for a good end, III. 53. Whether confessors are bound, with their own damage, to correct public sins, IV. 22. Whether he who considers less damage is bound to make restitution, X. 47. Whether he who, to avoid his own damage, X. 56 and 57. What he is bound to do who wishes to consider the damage of his neighbors or creditors, 87. What he who delays restitution is bound to do, 104. If the damage is much greater, whether the thief is bound to make restitution, 65 and 117 ad 4. Damage arising in a loan, is a title to receive something beyond the principal, 147 and 152. In a sale, to whom does it pertain, 169. Whether damage excuses from the integrity of confession, XVI. 39. Whether in the Jubilee, if one has not satisfied his debt, etc., 70, 116. Whether it is licit to warn of a common damage. Whether one may take care of himself from the knowledge of a confession, 161. Debtor and Debt. If a debt is doubtful, to what is the possessor of goods bound, whether of good or bad faith, I. 20. Whether a debtor can prefer any creditor he wishes, X. 113. If he is in necessity, also the debtor himself, 118 ad 120. Whether a donation made with borrowed money is valid, 128. Whether the burden of borrowed money can enter into a religious order, XIII. 27. Deception. If one knowingly recognizes deception, to what is the deceiver bound, X. 94. Deception in a purchase, if it is more or less than half the value, 172 ad 3. Decimals. How and by whom they are due, XX. 84 ad 86. Decisions of the four Rota concerning maintenance, VII. 4. Concerning prescription, X. 12. Whether the declarations of the Sacred Congregation have the force of obligating, II. 34. Whether the declarations are purely such and not purely such, 73 and 74. Declarations of the Sacred Congregation concerning the exemption of religious from bishops, XX. 76. Decree of the Sacred Congregation, II. 34. Rota of Rome, 35. Whether the decrees of the Sacred Congregation of Rites induce obligations, XV. 87. Catalog of decrees, 88. Decree of the Sacred Congregation, if it is not authentically established concerning the matter itself, no credence is to be given, XIX. 134 in fine. Dedecus. See Family. Whether natural defects fall under the seal, XVI. 154. How irregularity is removed by a defect, XIX. 87. Concerning irregularity from a defect of the soul, 112. (See also App. III. 89. Defect to be supplied in the priesthood, ibid. 94. Defend and Defense. Whether, for the defense of life, it is licit to kill someone, VIII. 11. Honor, 14. Goods, 15. Chastity, or to defend the life of a neighbor, 16 and 17. Whether it is licit, at any time, to prevent an aggressor on life by killing him, 19. Whether it is licit for an adulterer, to kill the man who attacks him in order to defend his own life, 20. What he who exceeds in defense is bound to do, X. 89. Whether it is licit to take away something for one's own defense, XI. 10. Deformed, when is it irregular, XIX. 122. On the day of the deceased, for whom a Mass may be offered, XV. 83. Whether Communion is licit in a Mass for the deceased, 88, decree X. Degradation, whether it is a censure, XIX. 67. Delight. Whether the species is to be explained in a

slow delight, III. 48. Delight in a bad act, and in a bad thought, what is the difference, 49. Delight in evil, under the condition that it would be licit, whether it is a sin, 50. Concerning betrothals and spouses, 51. Whether a slow delight is permitted to spouses, XVIII. 42. Whether it is licit to take delight in a bad cause for a good effect, III. 52. Whether in the damage of a neighbor for a good end, 53. Whether in things only forbidden by positive law, 54. Whether a small amount of matter is allowed in a sensible delight, IX. 1 and 2. Delegate and Delegate. Who can delegate, II. 61. (See also XX. 34.) What if the delegate dies, and how is it to be interpreted, etc., II. 61. (And XVI. 82. Who can subdelegate, II. 63. What if there is a clause, until dispensation is given, II. 62. Concerning delegated jurisdiction, XVI. 81. Whether a bishop can delegate a faculty, cap. It is licit; and whether for any particular case, etc., XX. 34. Whether for cases reserved by other bishops, 35, and whether it prevents the faculty of absolving the impeded from going to Rome, 40 and 41; and of dispensing in impediments to marriage, 58. Delict. Whether it can be made public for one's own defense, XI. 10. Whether for comfort or solace, and whether to one or the other man, 11. Whether it is a grave fault if the delict is public, to manifest it in one place, and to manifest it elsewhere, 12, and whether if at one time, etc. 13. Whether a connected delict, 14. Whether he sins gravely who narrates a delict. Whether he can impose it on the accuser so that he defends his cause, 35. For which things betrothal is dissolved, XVIII. 18. Whether by fornication, ibid. Impediment of a crime for marriage, 63. Crime, when is it a cause for divorce, 91 ad 1. Whether one can be censured for prior delicts, XIX, 8. What is required to incur irregularity from a delict, 81. If the delict is entirely hidden, 82. (And XX. 33.) How is this irregularity from a delict removed, XIX. 85. Concerning irregularity from a delict, 88 ad 93. (And App. III. 88.) How is denunciation made, XIII. 73. Whether tax collectors are bound to make denunciation, ibid. Whether correction is to be omitted, and whether a religious can make denunciation.

[*Latin ed. p. 849*]

RECORDS OF IMPORTANT MATTERS. 837, item; 74. Concerning warnings, 75. Concerning the denunciation of heretics, 76. Blasphemies, 77. Superstitions, 78. Denunciation of impediments to marriage, XVIII, 56. See *Sollicitatio*. Deposition, what it is, XIX, 67; and App. III, 85. Deposit, what it is, X, 136. When it should not be returned, 138. Desire and to desire. Whether desire without works is a sin, I, 6. How one sins who desires various evils, III, 50. Desuetude. Conditions and time, II, 80. Concerning ecclesiastical laws, 11 and following. What if any custom is disapproved, 81. Determination and determined. What if a sinner is determined, etc. IV, 26. Whether he who gives advice is already determined, is he bound to restitution? X, 46. Determination of price and of the thing is required for a valid sale contract, 165. Detraction, when is it sinful, XI, 7. Whether

one sins who detracts from the reputation of a religious order, or of a monastery, by naming them, 16. Whether he who incites and hears detraction, 17. Whether reputation can be compensated with money, X, 83, and XI, 20 and 21. Diaconate and deacon. Whether a deacon can baptize, XIV, 15. Whether he can administer communion, XV, 9. Matter and form of the diaconate, App. III, 90. Offices of a deacon, 91. What if he is under censure, and concerning the penance imposed upon him by the bishop, ibid. What if a deacon performs a ministry in mortal danger, 14. Dissimulation. See Detraction. Discerption. See Dilatio. Finger. Whether communion can be given with the posterior fingers, XV, 13. Worthy. Whether simpler benefits should be conferred upon the more worthy, XIII, 33. Whether patrons are bound to present the more worthy, 34. Whether for prebends, 35. Whether a less worthy person can be elected, 36. Whether it is sinful if a less worthy person is present, 38. Delay of a vow, how long is required for it to be sinful, V, 33. In returning a loan, X, 139. Whether, because of delay or anticipation of payment, the price can be increased or diminished, 178. Whether a delay of Baptism is a sin, XIV, 18. Whether a delay of penance is a sin, XVI, 57. Whether a delay of Mass is a sin, App. III, 107. Diocese. Whether a pastor can admit a pastor from another diocese, XVI, 77. Whether of the same diocese, 78. Who should be the bishop, 79. Whether a regular priest in one diocese can hear confessions in another, 80. Whether a bishop can impose censures outside the diocese, and what if he is under censure, XIX, 5. Dissolution. Whether betrothals are dissolved because of dissolution, etc. XVIII, 20. Dissimilarity, whether it dissolves betrothals, XVIII, 16. Whether an accession of inheritance, or a better opportunity, etc., 19, near the end. Dissimilarity of cult, whether it invalidates marriage, 64, to VI. To dispense and dispensation. Whether a local bishop can dispense with the vows of those who are traveling, etc. II, 42. Concerning dispensation without cause, and whether he who uses it sins, 46. A surreptitious petition, whether it is valid, 47. Whether it can be requested from a third party, 48. When can one use a tacit dispensation, 49. When is a superior bound to dispense, 52. A dispensation with bad faith, or without cause, whether it is valid, 53, and V, 40. Whether out of fear, II, 54. In what can the Pope dispense, 55, and with himself, 63. How the bishop and vicar, II, 57 and 58. In what can a pastor, 59. Whether with himself, 64. How does a dispensation cease, 66, to II, 67. Concerning simony, what should be done, IV, 53, near the end. Whether a vow not to seek dispensation is valid, V, 26. For dispensations of vows, what is required, 39 to 44. Concerning reserved vows, 45 and 46. Whether the second matter remains reserved, 48. Whether a dispensation can be given for the observance of Sunday, VI, 1. Whether for working on a feast day, 14. Whether for celebrating at home, 38. If relatives are married after a dispensation, do they commit incest, IX, 19. Whether he who has a vow of chastity and violates it is bound to seek a dispensation, X, 97. Who is a relative, etc., 98. Dispensation in fasting, XII, 22. Dispensations for meat,

whether one can eat fish, 6 and 7. Whether pork, 8. Whether those with dispensations for meat are bound to only one meal, 9. In a small collation, what quantity and quality is permitted, 16 to 19. Concerning betrothals under the condition that the Pope dispenses, XVII, 6. If an impediment to betrothals arises, whether the impediment, if it is evident, must be disclosed to the ignorant party, 81. When should consent be sought, 82. Whether the Pope can dispense in a valid marriage, 90, near the end. Causes for a valid dispensation. Whether all impediments must be explained, 84. Whether incest, etc., 85. Whether degrees, 86. Clauses of St. Penance, 87. Formulas of petition, 88. For dispensation of execution, 89. Dispensation concerning irregularity, XIX, 86. In the root of marriage, XVIII, 81. Whether a bishop can dispense in an irregularity due to defect, XX, 29. Due to a hidden fault, ibid. And when is it said to be hidden, 33. If a homicide is entirely hidden, 51. If it is accidental, 52. Whether a bishop can delegate a dispensation, 34. Whether to dispense in an irregularity and heresy, 39. Whether with those who are forbidden to go to Rome, 40. With illegitimate children, 49. With bigamists, 50. Dispensation concerning publications, 54. (See also XVIII, 58.) Concerning the vow of chastity and those who are forbidden to...

[*Latin ed. p. 850*]

338 INDEX ALPHABETICUS

petendum, XX. 54.
Dispensatio circa impedimenta dirimentia dubia, 55.
Dirimentia certa, 56 et 57.
An episcopus possit delegare talem facultatem, 58.
An possit dispensare circa interstitia, 59.
An ad celebrandum, 60, 61 et 64.
An regulares possint dispensare in irregularitate, 104 et 105.
An in praeceptis ecclesiasticis, 106.
In officio, 107.
An in votis, et jurejurandis, 108 et 109.
Disponere et Dispositio.
Quaenam dispositio requiritur ad recipiendum Baptismum, XIV. 28.
Ad communionem si dubitatur de peccato, XV. 34.
Certitudo moralis pro confessione, XVI. 118.
Confessarius tenetur disponere penitentem, 105. (Et XXI. 4.)
Quid si penitens habet probationem opinionis pro se, 119.
Si negat aut tacet aliquid peccatum, 120.
Dispositio ad extremam unctionem, XVII. 9.
An absolutio possit prolongari dispositis. Tract. ult. 14.

Distillatio quomodo vetetur, IX. 30.
Distinctio specifica peccatorum, III. 55 et 56, numerica, 57 et seq.
Distractio. Vide Attentio.
Diversi et Diversitas.
De diversitate objectorum totalium, XX. 64 et 65.
Qui obtat diversa mala quomodo peccet, 50.
Furtum diversis factum qualem restitutio importat, X. 28.
Qualem si a diversis eodem tempore, 30.
Qualem si plures domum incendunt, 55.
Dives an possit recipere stipendium pro missa, XV. 59.
Divortium quoad vinculum, XVIII. 90.
Quoad corpus, 91.
I. Ob delictum, ibid.
II. Ob morbum, ibid.
III. Ex consensu, ibid.
IV. Ob timorem, 92.
V. Ob adulterium, 93 et 94.
De jure revocandi adulterum, 95.
An propria auctoritate, 96.
Facto divortium conjugum potest incredi religionem, 97.
Diurnum impositum ab episcopo, etc. App. III. 91.
Dolor.
An sufficiat dolor generalis peccatorum, XVI. 12.
An debeat praecedere confessionem, 19.
Quantum temporis duret, 20.
Qui statim se reconciliat, an novum dolorem elicere debeat, 22.
De dolore peccatorum venialium, 23.
Vide etiam Contritio et Attritio.
Dolus.
Contractus dolo initus an valeat, X. 124.
Domicilium quando contrahitur, et quando quasi domicilium, II. 40.
Dominium directum et utile, X. 1.
De fructibus beneficiorum, 7.
Quot modis eorum dominium acquiritur, 9.
Praescriptio quoad dominium, 10 ad 13.
Dominium rei emptae quando transfertur, 107 et 167.
Quando rei donatae, 132.
Dominus.

Quomodo peccet dominus si laborare facit decem servos per mediam horam in festo, VI. 26.

Obligatio dominorum praesertim circa salarium, VII. 7.

Si dominus longe abest, cujus sumptibus res restituenda, X. 65.

Si evincit rem, 66.

Si est incertus, 67.

Si res aequa periisset apud dominum, 79.

An servus possit recipere stipendium a domino aere alieno gravato, 115.

Quando res domini praeservari debeat, 137.

Sors in societate tota est domini, 223.

Solus valor commoditatis attendendus, etc. 224.

Donare, Donatio et Donum.

Quis potest donare, X. 128.

Et an aere alieno gravatus, ibid.

An valeat donatio inter conjuges et inter patrem, 129.

Ante accipiat, nullam parit obligationem, 130.

An si per nuncium aut litteras, ibid.

Si ad causas pias, 111.

Revocatio donationis, 143.

Si est inofficiosa, ibid.

De donatione causa mortis, 134.

An pupilli et minores possint donare, 234.

Dona religiosi an valida et licita, XIII. 8 et 9.

An abbatissa possint donare et dare licentias, 12.

An liceat judici recipere dona, 66.

Dubitare et Dubium.

Dubium negativum et positivum quid, I. 12.

Speculativum, 13.

Practicum, ibid.

An cum speculativo operari quis possit, 14.

Si superior praecipit rem dubiam an ei obediendum, 18 et XIII. 17 ad 5.

Dubium circa Communionem ad quid obliget, I. 19.

Ad quid dubium satisfactionis aut debiti, 20.

De regula Canonum: In dubiis tutor pars, etc. requiritur dispensatio quid faciant quoad eorum obligationem. II. 22 et 23.

In dubio an conductur circa leges quid faciant quoad eorum effectus sit superstitiosus, pro quo standum, IV. 37.

Pro quo in dub. an sit votum vel propositum, V. 21 in fine.

An pueri in dubio usus rationis teneantur ad leges, II. 37.

In dubio juris non potest incipi possessio, X. 8 et 144.
In dubio an consilium fuerit causa damni, ad quid teneatur, 45.
Quid in dubio an proles sit viri aut alterius adulteri, 102.
An liceat conferre sacramentum dubium in necessitate, XIV. 3.
Baptismus dubius an repetendus sub conditione, 27.
Qui dubitat de peccato an possit communicare, XV. 34.
An in dubio jejunii, etc., quid si horologia sunt discordantia, 35.
Peccatum dubium circa confessionem, XVI. 30 ad 32.
De peccatis dubie confessis, 33.
Si postea fiant certa ad quid tenetur penitens, 34.
In dubio nullitatis confessionum quid, 46.
An peccet qui absolvit cum jurisdictione dubia, 34.
In dubio an correctio sit profutura, quid faciendum a confessario, 116.
Peccatum dubium reservatum an simplex sacerdos possit absolvere,

[*Latin ed. p. 851*]

RECORDS OF NOTE. 839 142. Concerning doubtful solicitations. 180. Whether marriage can be contracted with a doubtful impediment, XVIII. 35 ad II. and whether it is then permissible to request or grant [a dispensation], 36. What if a marriage has been contracted with a doubt, 37. An irregular impediment, doubtful, XIX. 79. A doubtful homicide, 80. A doubtful irregularity arising from a defect, XX. 29. Concerning the striking of a cleric with a grave doubt, 48. Whether, in a doubt, something omitted in the office should be repeated. Appendix III. 69. Duel. Propositions condemned by Benedict XIV. VIII. 27. When is it lawful; and the penalties of a duel, 28. On Intoxication, whether it is a grave sin, VIII. 4. Whether it is permissible as a remedy, 5. Whether for avoiding a mountain [of debt], 6. Whether to induce others. 7. Who is to be considered intoxicated, and what evils are imputed to him, 8. If an intoxicated person requests marital relations, whether there is an obligation to fulfill them, XVIII. 49. The Church. When is it considered polluted, IV. 39. (And see also Appendix III. 115 and 128.) Whether it can impose internal acts, II. 17. Whether it can dispense in vows in favor of a church, V. 41. Whether in the observance of Sunday, VI. 1. Whether Baptism must be conferred in the church. XIV. 18 et 30. Whether Confirmation, ad 3. Whether it is permissible in regular churches to admit outsiders to celebrate [Mass], XX. 75. in fin. et 77. Those who violate the immunity of the church incur a papal excommunication, App. III. 80. in fin. Whether a minister should attend to what the Church does, 18. Ecclesiastical. See Cleric. Effects. In a doubt whether an effect is superstitious, what is to be done, IV. 37. Concerning sympathetic powder, ibid. Whether it is permissible to delight in a bad act for a good effect, XII. 52. The effects of Confirmation, XIV. 53. Of the Eucharist, XV. 5. Of Extreme Unction,

XVII. 1. Of major excommunication, XIX. 17 et seq. Of irregularity, 75 ad 77. The effects of the sacraments, App. III. 22. Of orders, 31. Of the Mass, 102. Elector, Election and to Elect. When, in a disjunctive vow, should one stand [by a particular option], V. 31. What kind of election is that of an abbess, XIII. 22. Whether an election of a less worthy person is valid, 36. Whether such an elector is bound to restitution, 37. Who can elect a confessor, XVI. 85. The power of prelates in electing confessors, XX. 65. Election of status, Last treatise, 39 et 40. What is said in a fast concerning elections, XII. 11. Alms. When is one bound to give alms, IV. 18 et 19. Whether he who collects alms during Mass satisfies the obligation, VI. 32. The alms to which a priest is bound, VII. 45 ad 3. To which an bishop is bound, 64. The amount of alms that should be given during a jubilee, XVI. 65. Concerning alms given at Mass, see Stipendium. Purchase and Purchaser. What is the obligation of one who buys from a madman with regard to restitution, X. 53. What if one buys in doubt, 30. If no faith is given about the price, 107. A conditional purchase, 168. To whom does the risk and profit belong, 169. If with borrowed money, 171. Concerning chirographs. 179. A pact of redemption, whether it is lawful, 181. Whether a census is redeemable, 200. See Sell. What is an emphyteusis, X. 211. Ensalmi, whether they are permissible, IV. 34 ad 3. Epikeja, what it is and when it is permissible, II. 77. Episcopate and Bishop. The bishop can enact laws, and from whom does he have the power, and in what matters, II. 33 ad 4. Whether he can absolve pilgrims from a vow, 42. In what matters does he dispense, 57 et 58. Whether he is bound with the danger of life, II. 22. Whether he can dispense regarding an inability due to simony, etc., 53. ad Notand. 3. Whether he can institute festivals, VI. 3. Whether he can preach, 4. Whether he can dispense on a feast day, 14. Concerning the residence of a bishop, VII. 62. Where he must reside, 18. Excusing causes, 19. Concerning the duties of a bishop regarding ordinations, 47 ad 52. Seminary, 53. Concerning overseeing the celebration of Mass, 58. Visitation, 59. Care of nuns, 61. He is bound to give alms, 64. He must celebrate [Mass], 65. What if he plays [games] or attends [secular events], X. 221. Whether he can make a will, 236. (And see XX. 68.) Whether a religious bishop is bound by the will and regulations, whether he can become a religious, 28. The bishop must bless the chrism, XIV. 40. Whether the extension of hands is required in Confirmation, etc., 41. Whether with the right hand or by an instrument, etc., 42. The bishop is a minister of Confirmation, 44. Whether he can confirm outsiders, 45. The obligation of the bishop to confirm, 46. The bishop can prohibit a lesser stipend, but not a greater one, XV. 62. Whether he can reduce Masses, 76. Whether he can diminish them, 77. Episcopal approval for confessors, XVI. 74. Whether he sins if he unjustly revokes it, and whether the successor can revoke it for examination, 35. Who can approve a bishop. 79. Whether a bishop can choose a confessor for himself, 85. Whether a simple confessor before a bishop can absolve, etc., 96. Whether he can absolve from

papal [penitentials], 97. Whether a confessor can absolve the dying, if he can obtain the power from the bishop by letter, 98. Whether a bishop can dispense with married couples concerning a vow of continence, XVIII. 54. ad VI. Whether in proclamations, 58. Whether he can be censured, XIX. 4. Whether he can absolve from censures existing outside the diocese, 12. Whether the episcopate is an order.

[*Latin ed. p. 852*]

840 INDEX ALPHABETICUS distinctus, App. III. 27. Concerning the protestation of a bishop refusing to ordain irregular persons, etc. 33, ad II. Everyone ought to be ordained by his own bishop, ibid., ad IV. What constitutes a "proper" bishop; and from whom do regulars receive ordination, etc., 34. The matter of the Order must be imparted by the ordaining bishop, and the same bishop must say Mass, 29, in fin. Concerning penances imposed upon deacons, 91. Can a bishop grant permission to enter exempt monasteries, XX. 12. Faculty, cap. Liceat. Concerning irregular persons, 29. He who comes under the name of a bishop, 31. Can a bishop absolve pilgrims from sins and irregularities, etc., and whether outside of confession, 32. Can he delegate this authority, etc., 34. Can he absolve others from sins, 35. Can he absolve from sins after a council, 36. Can he absolve from sins committed in a shameful act, 37. Can he absolve from sins mentioned in the Bull of Celæ, 38. Can he absolve from irregularity due to heresy, and whether in the external forum from heresy, etc., 39. Can he absolve those who are impeded from going to Rome, etc., 40 to 45. And whether through others, 41. Concerning the six sins of a bishop, and especially the striking of a cleric, 46 to 48. Concerning irregularities, 49 to 52. Concerning incapacities, 53. Concerning marriages, 54 to 58. Concerning dispensations, 59. Concerning the celebration of Masses, 60 to 64. Concerning the election of a confessor, 65. Concerning the enclosure of nuns, 66 and 67. Concerning the approval of a confessor for nuns, and whether nuns incur a reservation, in the same number, 67. Can a bishop visit and punish regulars, and what concerning enclosure, 80. Concerning composition, 69. Concerning the reduction of Masses, 70. Concerning the union of benefices and the erection of parishes, 71. Concerning Masses of regulars, 75 and 77. Can a bishop grant an extraordinary confessor to exempt persons, and remove the ordinary, 80. Can he demand an accounting of Masses and legacies, etc., 81. Can he proceed against regulars, 82 and 83. What if fewer than 12 religious reside in a monastery, 88. Where bishops are to be buried, 91. Can he examine regulars internally, 103. Concerning the license of which those who need it, 91. Concerning preaching, 124 to 126. Can a bishop examine regular preachers, 127. Can he forbid them from preaching, 128. Epistle. Are those who are impeded required to petition for permission by letter, etc., XX. 44. To err. What if someone notices that he has erred in his office, App. III. 72. Error. Is a vow emitted through error valid, V. 23.

Concerning contracts, X. 124. What is to be done if an error in the Mass is noticed, XV. 54. Confessions must be repeated when an error is apparent, XVI. 46. A common error concerning confession, 90. How a confessor ought to repair errors, 121 and 122. An error concerning betrothals, XVIII. 1, in fin. Concerning marriage, 61. Eucharist. The essence, specific reason, and unity, XV. 1. Whether it is necessary by a necessity of means. 2. Whether consecration in a single species is illicit and invalid. 3. Exceptional cases. 4. The effects of the Eucharist. Whether, while the species remain, it is illicit to increase grace. 6. Preservation, and the obligation to dispense it. 8. Exposition. 88. Decrees XXII and XXIII. See Communion and Viaticum. Eumuchus when he is irregular, XIX. 125. Examination. It is not necessary for the approval of a confessor, XVI. 74. The successor of a bishop can revoke the examination, 75. A confessor is bound to examine the penitent, 102. And what manner must be observed in that examination, 103. Can a bishop recall regulars for examination, XX. 103. Concerning the examination of novices and others, tr. ult. ex n. 18. Are examiners to prefer those who are more worthy, XIII. 39. To exare, whether it is a servile work, VI. 7. Excommunicated and Excommunication. Whether the excommunicated ought to seek absolution for themselves, inc. II. 21 and VI. 39. Whether they are bound to attend Mass, etc., VI. 39. Whether the excommunication, etc., II. 21 applies to pregnant women. Those who seek an abortion, VIII. 23. Whether, during pregnancy, 28. Whether he who kills one cleric for another, X. 85. An excommunicated person, reserved, if he ought to communicate, what must be done, XV. 29. An excommunicated person can absolve the dying, XVI. 92. Excommunicat. in those who do not denounce a solicitous person. 177. The effects of a major excommunication, XIX. 17. Privation of benefice, dignity, and pension, 19. The effects of a minor excommunication, 27. Of an excommunication not reserved, from n. 28. Excommunication reserved, 30. Concerning excommunications reserved to the Pope in the Bull of Celæ. From n. 53. Concerning heretics and their supporters, 53 and 54. Concerning the books of heretics, 53 to 59. Concerning books prohibited in the index, 61 and 62. Other cases of excommunication in the Bull of Celæ. 63. Whether it is permissible to receive the sacrament from an excommunicated person, App. III. 20. Whether a beneficiated person who is excommunicated is bound to restore the fruits of the benefice. 84. Those who incur the loss of ecclesiastical immunity concerning the restoration of the fruits of the benefice. 80. More concerning excommunication. 81 to 83. A deacon excommunicated, etc. 91. Can a Mass be offered for an excommunicated person, 103. Exemption of ecclesiastical persons by divine law from secular power concerning spiritual matters, etc., XX. 18. Beneficiaries in the secular forum, 22. Those tonsured, 23. Those who possess these privileges, 21. Whether beneficiaries, 22. Those tonsured, 23. Those who have abandoned the habit, 24. Exemption of places, 25 to 28. Regulars exempt from the secular forum, 21. From the jurisdiction of

bishops, 72 to 74. Exceptional cases, especially concerning Masses, 75 and 76. Exemption of regulars from tithes, 84 to 87. See Immunity.

[*Latin ed. p. 853*]

RECORDS OF IMPORTANT MATTERS. 841. The requirement of the exercise of the religious habit, etc. App. III. 45, ad XII. Whether it is permissible to disinherit children, X. 238. Exorcisms. From whom they may be performed, V. 20. What is an exorcist? Power and office, App. III. 55. To expel. To what are religious persons expelled who are removed from their order, XIII. 4. Causes of expulsion, Ibid. Whether expenses usefully incurred by a servant are to be reimbursed by the master, X. 78. Whether a religious person is permitted by his superior to spend money, and whether he sins if he uses it for frivolous purposes, XIII. 13. Those exposed after Baptism, XIV, 24. Whether they are irregular, XIX. 129. When it is permissible to expose the Eucharist, XV. 88. Decree XXII. When statues and relics are to be placed, ibid. Decree XXIII. Whether it is a sin to spit after Communion, XV. 45. Ecstasy in contemplation, what it is, App. I. 17. Whether the extension of the hands during Confirmation is essential, XIV. 41. Whether one who flees to the church to escape capture incurs excommunication, App. III. 30, at the end. Extreme Unction. Essence and effects, XVII. 1. Remote matter, 2. Proximate matter, 3. Whether the unction of all the senses is necessary, 1. The form of Extreme Unction, 5. The minister, 6. The subject, and when Extreme Unction ought to be given, and when it can be given, 7. When it can be repeated, 8. Concerning disposition, 9. Whether it should be given to children, 10. To the dying, the impenitent, etc. 11. Whether there is a grave obligation to receive it, 12. Concerning the administration, 13. Factor. Whether this office is permissible to a cleric, X. 195. A fact is not presumed unless it is proven, but it is presumed that it is to be proven by law, I. 16. Faculty. Whether a superior unjustly denies a faculty concerning reserved matters, whether an inferior may absolve, and what if it is denied by a regular prelate, XVI. 134. Faculties of the Holy Penitentiary, XIX. 148. See Episcopatus, Bishop, and Delegare. Fame. Restoration of reputation and the manner thereof, XI. 18. Excuses, 19. Whether the impediment of fame is sufficient to prevent marriage, XVIII. 57. Family. If a marriage is entered into with dishonor to the family, whether one should keep the promise, X. 95, ad IV. Servant. If a servant is assigned work on a feast day, how does he sin, VI. 26. Whether he satisfies by hearing Mass in a private oratory, and when, in App. Clause X, after n. 38. Servants who are forced to omit Mass, when are they excused, 40. Concerning the salary of a servant, the obligation of the master, VII. 7. The obligation of servants if they steal, if they leave against the agreement, 8. When they may compensate themselves, 10 and 11. Concerning the thefts of servants, X, 34. Whether it is permissible for them to receive wages from a master using money obtained dishonestly, 115. Servants of monasteries concerning the Paschal Communion, where

are they obligated, XII. 42 ad 3. Fool. See Amens. Whether a person who is feverish is irregular, XIX. 121. Woman. See Mulier. Feast. Whether the obligation of a feast is a divine precept, VI. 1. Whether the internal worship is required for the fulfillment of the feast, 2. Whether a bishop can institute feasts, 3. Feud. What it is, X. 212. Fidejussio. What it is, X. 232. Faith. What it is, and what is the object of faith, IV. 1 and 2. Mysteries and truths to be known and believed, 3. Acts of faith, when are they obligatory, IV. 1. How does one sin by blaspheming against faith, V. 3. Concerning probability in matters of faith, I. 22. If a superior dispenses with something in bad faith, is it valid, II. 53. Whether one who does not act in good faith is bound to make restitution, VII. 16. Concerning a possessor in good faith, X. 78. Bad faith, 77. Whether one who has been absolved from reserved matters in good faith is validly absolved, XVI. 139. Son. If a son negotiates his father's money, whether he can receive a part of the profit corresponding to his labor and industry, X. 3 and 228. Concerning the thefts of sons, 32. If a murderer has obtained forgiveness from his father, whether he is bound to restore to his sons, 86. Whether an adulteress should reveal this to her son, etc. 99. And whether the son is bound to believe her, 100. Concerning a loan given to sons of the family, 141. Concerning their games, 215. Whether they can be disinherited, 238. Whether they can become religious, leaving their parents in need, XIII. 23. What if they have made a profession, ibid. If the father dissents, 24. Whether parents can abandon their sons; and whether brothers, etc. ibid. Whether sons of infidels can be baptized against the will of their parents, XIV. 20 and 21. Whether they can sell their sons who are infidels and not baptized, 22. What if the father promises a marriage for his son, XVIII. 5. If a son contracts a marriage without the consent of his father, 10. End. Whether a vow made with a bad end is valid, V. 25. Whether a law ceases to be valid if the end ceases.

[*Latin ed. p. 854*]

842 INDEX ALPHABETICUS: The law ceases, II. 69. Concerning prohibited books, 70. Whether a donation, if not used for its intended purpose, is invalid, X. 132. Essential and just conditions for marriage, etc., XVIII. 30. The treasury. Whether one who hinders the treasury from collecting its due is obligated to make restitution, X. 62. The fetus. Various opinions concerning the time at which the fetus acquires a soul, VIII. 22 at the end. Whether it is permissible for a mother to take medicine that may endanger the fetus, etc., 25 and 26. Whether abortive fetuses are to be baptized, XIV. 20. Forensic matters. Forensic acts are prohibited on feast days, VI. 12. Form of Baptism, XIV. 14. Confirmation, 43. Extreme Unction, XVII. 5. Marriage, XVIII. 28. Whether the matter and form in the sacraments were determined by Christ, XVII. 15. (And Appendix III. 8.) The form connected with the matter, Appendix III. 6. Whether a change in the form is valid and permissible, 7. The form of Holy Orders, 29. (And XVII. 15.) The form

of the subdiaconate, Appendix III. 57. The diaconate, 90. The priesthood, 92 and 93. (And see also XVII. 16.) The form of the Eucharist, Appendix III. 100. Formulas for prayers for the penitent, XVIII. 38. Formula for the execution of a dispensation, 89. Formula of contrition, XVI. 117. Whether a betrothed woman is of a different species, IX. 13. Whether fornication dissolves betrothals, XVIII. 18. Whether fornication by betrothed persons is a double sin, ibid. The forum. The privilege of the forum concerning ecclesiastical persons, XX. 19. Concerning goods, 20. Who is entitled to it, 21 to 24. A bishop in the external forum can absolve from heresy, 39. Inherent weakness in recidivists, etc., last page, 15. Fragments of the host given to brothers, VIII. 6. Concerning the society among brothers, X. 229. If brothers remain in extreme necessity, whether they can enter a religious order, XIII. 24 at the end. Whether one who defrauds the tax authorities is obligated to make restitution, X. 81. Whether one who hinders the treasury from collecting its due is obligated, 62. Whether a custodian is obligated if he does not report it, XIII. 73. Parents. See Parents. Gratitude concerning marriage, how it should be counted, XVIII. 62 at the end. Whether all should express gratitude in prayers, 86. Grace. If a minister of a sacrament is not in a state of grace, does he sin, Appendix III. 11 to 13. If he is a layman, or if he does not administer it solemnly, and whether contrition is sufficient, 12. If a deacon, administering in a state of mortal sin, does he sin, 14. Sanctifying and sacramental grace, 22 and 23. Gratuitousness. Whether things received gratuitously should be postponed, X. 108. Whether gifts in simony are permissible, IV. 44. Whether debts can be included in a loan, X. 144. Burden. Whether it is permissible to use knowledge of confessions in the burden of penance, XVI. 159. Whether a probable opinion is sufficient, 164. Governance. Whether it is permissible to use knowledge of confessions for external governance, XVI. 159. Able. Whether a simple priest is obligated to declare himself able to hear confessions, etc., XVI. 126 and 127. Habitual intention in the sacrament, is it sufficient, XIV. 1 and 2. Whether it is sufficient in the application of the Mass, XV. 80. Habitual sins. Whether they can be absolved, last page, 8. And whether absolution can be postponed with the penitent disposed. 14.

[*Latin ed. p. 855*]

RECORDS OF NOTE. 843: Is a clerical habit required for enjoying certain privileges? XX. 23 and 24. Do married clerics who hold office enjoy these privileges? 21, and App. 49 to 51. Does a subsequent inheritance discharge the betrothal obligations? XVIII. 19, towards the end. Homicide: What must a murderer restore to the heirs? X. 87. What if their loss is intended? Ibid. What if it is imputed to a third party? 88. Can an heir accept donations if the donor, etc.? 133. The obligation of a usurious heir. 162. Heresy and Heretic. For heresy, error of understanding and pertinacity are required. IV. 5. Concerning the denunciation of heretics. XIII. 76. Are

baptized persons who have been baptized by a heretic to be rebaptized? XIV. 26. Excommunications against heretics and their supporters. XIX. 53. Concerning their books, etc. 55 to 62. Can a bishop absolve heresy by virtue of canon law? It is permissible. 20, 38. Can he dispense in cases of irregularity caused by heresy? 39. Can he absolve from heresy a slave or other person? Ibid. Asti. Concerning the sale under the hammer (auction). X. 175 and following. Homicide of another. 84, and whether the murderer is obligated to restore. X. 82. What if someone kills the murderer of another? 84, and whether the murderer is obligated to restore and make amends. 85. What if remission was obtained from the father, is the son obligated to restore to the children? 86. What if the intention is to cause harm to others? 87. What if the homicide is imputed to others? 88. What if the person exceeds in their defense? 89. Homicide with regard to irregularity; and whether a doubtful case of homicide should be considered irregular. XIX. 80. For what reason does homicide incur irregularity? 83. When is homicide entirely concealed? Can the bishop dispense? XX. 51. When is it accidental? 52. Can religious orders dispense in cases of irregularity due to homicide? 105. Honor. See Contumely. Hour and Canonical Hours. In which hour can Communion be given? XV. 17. Who are obligated to observe the Canonical Hours? App. III. 61. Are excommunicated persons, etc., obligated? And are those who recite without internal attention obligated to make restitution? 64. How many sins are committed by one who omits his duty? 65. A canon who does not chant the proper texts; how many sins are committed by one who omits parts of the Breviary? At the end. What is meant by a deficiency in the text? How many sins are committed by one who throws the Breviary into the sea? And should it be retrieved if there is doubt whether something from the office has been omitted? 69. What is required for reciting properly? 70 to 75. Is it mortal to change to an equal or quasi-equal text? 70. If someone continues with another text, should he recite the office of that place? 71. What if someone realizes they have erred? 72. Is there an obligation to recite litanies and the office for the dead? Ibid. Is vocal pronunciation required? 73. Must it be complete? 74. Must it be continuous? Ibid. IV. Order of the Hours and time. Ibid. V and VI. Is intention and attention required? 75. What are the causes that excuse from recitation? 76. Hospital. Are adulterers obligated to restore expenses if they send their children to the hospital? X. 103. Hospices. How can they be established, etc.? XX. 89. Host. Can Communion be given in a large host? XV. 14. What if fragments remain? 18. Hypothec. Is the hypothecary creditor to be preferred over others? X. 112. What is a hypothec? 233. Idiom. Is someone ignorant of the idiom obligated to maintain the integrity of confession? And is he obligated to use an interpreter? XVI. 35. Ignorance. Is ignorance of natural precepts permitted? I. 5, and II. 43. Which ignorance is considered vincible? I. 4, and II. 43. How many kinds of ignorance are there? III. 13. Should someone laboring under ignorance be corrected? IV.

20. Does ignorance excuse from censures? XIX. 8. Ignorant persons are not excused from sin, but are excused from censure. XVI. 129. Should the nullity of marriage be revealed to an ignorant person? XVIII. 81. How should consent be obtained from an ignorant person? 82. Ignorance of the law and the penalty concerning irregularity. XIX. 83 and 84. Illegitimate. Is it irregular? XIX. 126 to 128. How can an illegitimate child be legitimized? And is it sufficient that at the time of birth, marriage could have been contracted? 126. Concerning the dispensation of the bishop. XX. 49. Concerning the power of religious orders. 104 and 105. Immunity of pious institutions. XX. 25 to 28. Those who violate the immunity incur excommunication and are expelled from the pious institution. App. III. 80, in the middle. Impediment and to Impede. Are we obligated to remove an impediment that obstructs the execution of the law? II. 20. Is it permissible to impose an impediment on the law? Ibid. Are excommunicated and incarcerated persons obligated to remove it, etc.? 21. What impediments to marriage in doubt obligate? 51. Who impedes one who wishes to impede? Is he obligated to restore? X. 58. Does one who impedes another from obtaining a just good? 61. Does one who impedes the treasury with evil intentions? 62. Does one who, out of hatred but without evil intentions, impedes a neighbor from obtaining something? 63. Does an impediment discharge the betrothal obligations? XVIII. 15. Should a dispensation then be sought? Ibid. Is it permissible to contract with a doubtful impediment? 35. And

[*Latin ed. p. 856*]

844 INDEX ALPHABETICUS: To petition and to fulfill an obligation, 36. What if the marriage has begun with a doubt that impedes it? 37. Concerning impediments that prevent petition, 41. Concerning impediments that are impediments, 52 and following. Is it permissible to consummate a marriage on a feast day, and to bless the marriage? 53. Concerning the vow of chastity, 54. Concerning impediments that must be reported, 56. Is a mere reputation of an impediment sufficient? Must the betrothed be questioned about the impediment, and what if the parish priest knows? 57. Can the bishop dispense? 58. Can the vicar or parish priest? 59. Concerning impediments that are absolute, 60. Error, 61. Condition, vow, and consanguinity. 62. Delict, 63. Disparity of cult. Power and fear, 64. Order, bond, and public decency, 65. Age, 66. Affinity, 67. Impediment to petition, 68. Who can dispense? 69. Concerning clandestine marriages, the assistance of witnesses, and the assistance of the parish priest, 70 and 71. Concerning foreigners, 72. Concerning impotence, 74 and 75. Concerning abduction, 76. When is an impediment said to be hidden? 77. What if the parish priest and the witnesses were aware of the impediment? 78. In the petition, must all impediments be expressed? 84. Must all circumstances, especially incest, be mentioned? 85. And must all degrees be mentioned? 87. Does one who does not prevent the striking of a cleric incur excommunication? XIX. 49

in the middle. Dispensation in doubtful impediments, XX. 55. Concerning certain impediments, 56 and 57. By whom can the bishop delegate such a dispensation? 58. Impediments. Can the bishop absolve someone from impediments when the bishop can? XX. 40. Can this be done through others? 41. What is considered an impediment? 42. What is considered a perpetual impediment? 43. Are those who are impeded required to go to Rome by letter? 44. Should they at least go to the bishop? And what if they cannot, or are at the point of death? 45. The unrepentant are to be deprived of burial, XX. 91. Imposition of hands in confirmation, is it of the essence? XIV. 41. In the priesthood, XVII. 16. Impotence excuses from the precept. II. 45. In fasting, XII. 23 and 24. Are the elderly excused? 25. Does physical impotence excuse from material integrity in confession? XVI. 35. Are the dying excused? 36 to 38. Does moral impotence excuse? 39. Concerning impotence in marriage, XVIII. 74. Minors. Are betrothals between minors valid? XVIII. 7. Are they dissolved by consent? 14. Do minors who strike a cleric incur papal excommunication? XX. 47. Incest. Is there a distinction between consanguineous and affine relationships? IX. 17. Between degrees in affines, ibid. Between degrees of consanguineous? 18. If a dispensation is obtained, is incest committed? Etc. 19. Is a spouse impeded from petitioning due to incest, and what if they petition? XVIII. 41. Concerning this impediment to petition, 49. Must incest be explained in the petition for dispensation? 85. Inconvenience. Does the law obligate with a grave inconvenience? II. 18. What inconvenience excuses from a sacred duty? VI. 41. Indifference to sinning, or to meriting. III. 10. Indifference of judgment, 11. Can an indifferent act be given? 21. Unworthy. Does he who ministers the sacraments to an unworthy person sin? App. III. 15. What is an indulgence? XVI. 62. Can a plenary indulgence be applied particularly? 63. Defamation. See Detractio. Defamation concerning irregularity, XIX. 140. Can a defamed person be ordained? App. III. 33 to II. Faculty to dispense for regular canons, XX. 104 and 105. Exposed infants, are they to be baptized under a condition? XIV. 24. Can confirmation be given to infants? 49. Are exposed infants irregular? XIX. 129. Infection. Does the danger of infection excuse from the integrity of confession? XVI. 39. When can an inferior absolve from reserved matters? XVI. 133. Afflicted. How should the confessor behave with those afflicted by a demon? Tract. ult. 50 to 52. Unbeliever and Unbelief. How many kinds of unbelief are there? IV. 4. Is it licit to impose servile works on unbelievers on Sundays? VI. 1, at the end. Can the children of unbelievers be baptized against the will of their parents? XIV. 20 and 21. Can they be sold to their parents if they are not baptized? 22. Infirm. If the chaplain is infirm, is he obliged to celebrate through another? XV. 73. If, while the sick person is receiving Viaticum, it is determined that past confessions were invalid, is he obliged to make a complete confession? XVI. 39. When must the doctor impose confession upon them? Tract. ult. 33 to V. Infirmity. When does it excuse from a sacred

duty? VI. 39. Is a salary due to an infirm servant? X. 210. Does infirmity canonically excuse from attending the choir? XIII. 52. When is infirmity a cause for divorce? XVIII. 91 to II. Inability. Penalties for inability, II. 25. Inability due to simony for benefices, IV. 51 and 52, and XIII. 58. Can the bishop dispense in this case? IV. 53 at the end, and XX. 53. Enemy. How many sins does one commit who wishes various evils upon an enemy? III. 65. What common signs should be shown to an enemy? V. 16. Concerning the remission of injury. 17.

[*Latin ed. p. 857*]

RECORDS OF IMPORTANT MATTERS.

845. Innocence. Whether it is permissible to kill an innocent person, VIII. 21.

A faulty donation can be revoked, X. 133.

To instruct. A confessor is bound to instruct the penitent, XVI. 105.

The material integrity of confession, XVI. 29.

Circumstances that aggravate, ibid.

Regarding formal integrity, etc. Physical impotence excuses the mute, deaf, those ignorant of the language, and the infirm from material confession, 35.

Whether a dying person is excused, 86 and 87.

Moral impotence. When does moral impotence excuse from material confession? 39.

Intention. What intention is required for a law, vow, or penance? II. 29.

For custom, 79.

For desuetude, 80.

For Mass, VI. 27.

Regarding the intention of the minister and the recipient in the sacraments. Appendix III. 9.

Whether the intention of the minister to do what the Church does is required, 18.

What is required regarding intention in the recitation of the Divine Office? 75.

Interception. Whether someone who intercepts funds, etc., is bound to restitution, X. 62.

An intercessor concerning simony, IV. 41.

What is an interdict? Appendix III. 86, and more fully XIX. 68 to 70.

Interpreter. Are those who do not know the vernacular language bound to confess through an interpreter? XVI. 35.

Interpretation. In how many ways can interpretation be done, and by

whom? II. 72.

Whether it requires promulgation to be binding, 73.

Regarding doctrinal interpretation; and if it prohibits, etc. 75.

Rules for required interpretation, 76.

When should the law be extended from case to case? 78.

Interpretation of privileges, XX. 6 to 8.

Interruption of form. Does an interruption affect the validity of a sacrament? Appendix III. 8.

Interstices. Are interstices required to receive the orders? Appendix III. 41 and 42.

Regarding the dispensation of the bishop in interstices, XX. 59.

Notification of the revocation of privileges, XX. 17.

Invincible. See Ignorance.

Irregularity. Does one incur an irregularity by killing one person for another? X. 85.

Is an irregularity a censure? XIX. 72 and 73.

Effects of irregularity, especially concerning benefices, 75 to 77.

Irregularity must be expressed, 78.

An irregular doubt, 79.

Whether a suspected murderer is irregular, 80.

What is required to incur an irregularity? 81.

If a crime is alleged against an irregular person, 82.

Whether knowledge of the law is required, 83.

Whether an irregularity is, 84.

How is an irregularity generally removed? 85.

How is it removed by defect? 87.

Regarding dispensation from irregularity, 86.

Regarding irregularity from a crime, 88 to 111.

From defect, 112 to 146. (And Appendix III. 87 and following.)

Whether a bishop can dispense in an irregularity from a crime, XX. 29.

From defect, if it is doubtful, ibid.

Whether to outsiders, 32.

Whether in an irregularity incurred by heresy, 39.

The power of the Regular Canons concerning dispensation, 104 and 105.

To irritate. Who can invalidate a vow? V. 19 and 36.

Whether the vows of subjects are inherently invalid, 37.

Journey. Whether Regular Canons can hear confessions on a journey, XX. 102.

Fasting. How does one sin if they eat meat or another food multiple

times, and are they still bound to fast? XII. 20.

Regarding small amounts, ibid.

Regarding the hour of refreshment, 21.

Causes that excuse from fasting, and regarding dispensation. 22.

Impotence, 23 and 24.

The elderly, 25.

Labor, 26 to 33.

Illness, 34.

Those who wish to receive Communion and doubt whether they are fasting, to what are they bound? I. 19.

Regarding natural fasting, those who doubt whether they are fasting, can they abstain from Communion; and if two hours are dissonant, whether it is permissible to follow the last one, and whether food taken from outside invalidates the fast? XV. 35.

Regarding leftovers, 36.

Water or sugar, 37.

Tobacco, whether its use is permitted, 38.

Smoke, 39.

Whether tobacco or aromatics rubbed on the teeth are permitted, 40.

Whether if water accidentally passes into the stomach, 41.

Whether capilla, paper, a pebble, etc., 42 and 43.

Whether a non-faster can celebrate to avoid scandal, 53.

To perfect the sacrifice if the wine is doubtful, 54.

Whether to avoid death, 55.

See Abstinence.

Jubilee. Doubts declared by Benedict XIV regarding it, XVI. 64.

Whether all works must be completed in one week, and regarding prayer, almsgiving, and Communion. 65.

Whether in the Jubilee, are any reserves removed by confession? 66.

If someone who has been absolved does not fulfill the conditions of the Jubilee, does he sin, and can he be absolved from the reserves? 69.

Regarding partial satisfaction, 70.

From which cases and censures can one be absolved in the Jubilee? 71.

The Jubilee year, 72.

Judge. When can he condemn, or inquire, or diminish the penalty, and whether private knowledge is required, etc.? XIII. 63 and 64.

Whether with a less probable opinion, I. 24 and XIII. 65.

Whether he can divide with a commissary, etc., and whether he can receive gifts, 66.

Whether he can retain the price of an unjust sentence, 67.
Whether a sentence of a judge is required to fulfill betrothal, XVIII. 26.
Whether for divorce, etc., 97.

[*Latin ed. p. 858*]

846 INDEX ALPHABETICUS: Speculative and practical judgment, I. 13 and 14. The judgment required by law, V. 14. A rash judgment is sometimes a sin, XI. 1 and 2. Concerning judgments made by confessors regarding sins, XVI. 104. Oath. When is it called an oath, V. 12. Its various types, 13. How those who swear without the intention of swearing sin, 16. Concerning oaths of condemnation, 13. The conditions for a lawful oath, 14. Concerning equivocation and mental reservation, 15 and 16. A promissory oath, how it obligates, 18. Whether one who promises a secret is bound to keep it, even under the threat of life, ibid. in fine. How the obligation of an oath is removed, and concerning oaths of perseverance, 19. Concerning adjuration, 20. An oath made in a game, concerning whether it obligates, X. 218. Jurisdiction. Who has ordinary jurisdiction, and who has delegated jurisdiction, XVI. 81. Concerning delegated jurisdiction, 82. Concerning presumed consent of the bishop, 83. Whether one who absolves with doubtful jurisdiction sins, 84. Who may choose their own confessor, 85. Who may confess to priests, 87. Concerning religious, 88. Concerning nuns, 89. Concerning canonical and common errors, 90. Concerning probable jurisdiction, 91. Whether excommunicated persons, etc., may absolve a dying person, 92. Whether simple priests may absolve before approved priests, 93. Exceptional cases, 94. Concerning an accomplice in a heinous sin. 95. Whether a simple confessor may absolve before a superior, 96. Whether from papal authorities, 97. Whether a dying person is bound to request a dispensation from a superior, 98. Reservation is a restriction of jurisdiction, 128 and 129. Excommunication deprives one of jurisdiction, XIX. 20 ad VII. Right in a thing, and right to a thing, what are they, X. 1. The right to beg, whether it can be forfeited, 208. Concerning the right of patronage, XIII. 32. How justice is divided, X. 1. Only commutative justice obligates to restitution, 36. Whether it is lawful to demand something in a loan, due by justice, 161. Labor and to labor. Who can dispense on a feast day, VI. 14. Whether custom excuses, 15. Whether out of piety or charity, etc., 16 and 17. Whether out of necessity, 18 to 21. Whether for great profit, 22. Whether to avoid idleness, 23. Whether for utility, 24. Whether a small amount of material is permitted, and what is meant by that, 25. He who imposes work on ten servants, how he sins, 26. When does labor excuse from fasting, XII. 26 and 27. Whether traveling people are excused, 28 to 30. Whether wealthy artisans, 31. The strong, 32. Whether one may freely accept labor, 33. See Works. Dairy products. Whether they are forbidden during fasting, XII. 3 and 4. Lay people concerning prohibited games, X. 217. Whether baptized by lay people must be re-baptized, XIV. 25. Whether lay people who receive

Communion without confession are bound by the first precept, XV. 33. Whether a lay person sins if they administer the sacraments, App. III. 12. Stone. Whether breaking a stone breaks the fast naturally, XV. 42 and 43. Lard, whether it is permitted on days of fasting as a substitute for dairy products, XII. 5. A legacy left to virgins, whether it is due to a prostitute, X. 236. A legacy left to a girl under the condition that she marry, or if she does not marry, when is it due to her, XVIII. 12. Concerning a legacy left to virgins, or to penitents, and concerning dispensation from the Holy Penitentiary, XIX. 148. Whether a bishop may demand an accounting from religious concerning legacies of Masses, XX. 81. Whether the legislator is bound by the laws, II. 38. Legitimate. Whether a godfather is permitted to make real vows; if he harms the legitimate rights of his children, V. 29 ad III. Concerning legitimate debts to children, VII. 4. Leniency concerning irregularities, XIX. 144 and 145. Law. Whether a doubtful law obligates, I. 15 and 33. Whether it obligates if there is doubt whether it has been abrogated, 15 in fine. In doubt whether it has been accepted, 16 and II. 23. Conditions of a law, II. 3. Promulgation, 4. Whether civil and pontifical laws require promulgation in order to obligate, 5. Whether two months, etc., are required, 8. Whether acceptance is required, 9 and 10. If it has not been accepted for ten years, etc., 11. If the majority, etc., 12. If the law is difficult, 13. A serious matter obligating under a light penalty, 14. Formal contempt, ibid. Indications of a serious obligation, 15. To what do mixed laws obligate, 16. Whether a law can prescribe internal acts, 17. Whether it can obligate with great damage or inconvenience, 18. Whether a natural obligation can be removed by a law, 19. Whether we are bound to remove or prevent obstacles to a law, 20 and 21. To what do doubts concerning a law relate, 22 and 23. To what do penal laws obligate, 24. To what do privative doubts concerning a law relate, 22 and 25. By presumption, 26. Whether charity is required to satisfy a precept, 28. Whether intention is required, 29. Whether several actions can be satisfied by several precepts, or whether several precepts can be satisfied by one action, 20 and 31. Whether civil laws obligate, and who can create laws, 33. Whether the Holy Congregation, 34. Whether the rota, 35. Whether children are bound by laws, 37. Whether foreigners, 39 to 41. Dispensations from vows, 42. Whether ignorance excuses, 43. Fear, 44. Whether impotence, 45. If the end ceases, does the law cease, 69 and 70. Whether general laws can abolish particular laws, 71. Concerning interpretation, 72. Epikeja, 77. Whether a law can be extended to a case by case basis, 78.

[*Latin ed. p. 859*]

RERUM NOTABILIUM: 847 Irregularities are expressed in the law, XIX. 78. Knowledge of the law concerning irregularities, 83. Ecclesiastical laws concerning impediments to receiving the Sacrament, XVIII. 68. Libellus. What is a "libellus" (small book or letter)? X. 213. Liber. Whether the pro-

hibition of books ceases when the danger is gone, II. 70. Whether one who retains or reads the books of heretics incurs excommunication, XIX. 55 to 59. Whether one who hears someone reading, 58. Whether one who reads heretical manuscripts, 59. Books proscribed in the index, 60 and 61. Whether one incurs excommunication for retaining such books, 62. Liberty of man. III. 2. How many kinds are there? 7 to 9. Liberty of indifference, 10. Liberty of judgment, 11. Those who injure ecclesiastical liberty, by fleeing to the Church, incur excommunication. The Pope, in Apostolic Constitution III. 80, speaks of this. License. Whether a license from the bishop is required for the absence of a parish priest, VII. 17. Whether a license is required orally or in writing, 20. Presumption concerning poverty, XIII. 11. What if it is unjustly denied? 12. If granted by an abbess concerning donations, ibid. License for frivolous uses. 13. For games, 14. If a license is denied by a superior and granted by an inferior, is it valid? 20. Whether a confessor, without a license, can assign penance. XVI. 124. Whether one who sins in trusting in a license can be absolved from reserved matters, 144. Whether a license extends to reserved sins. 149. Whether one can be admonished with a penance concerning a license. 152. Concerning the license to enter a monastery for nuns. XIX. 34 to 39. Concerning conversations with nuns, 40 to 45. Whether religious can preach without the bishop's license, XX. 124 and 126. Ligna (wood). Whether stealing wood is ever a sin, X. 25. Lingua (tongue). See Idioma (language). Litaniae (litanies). Whether they are to be recited by obligation in the office. Apostolic Constitution III. 72. Littera (letter). How long can a donation made by letter be revoked? X. 130. Whether it is licit to resign or read letters from someone, XI. 5. Whether it is permitted, 9. Whether a dying person is bound by letter to obtain absolution, XVI. 98. Whether one is bound by letter to denounce something, 176. Loca et Locus (places and location). What places are called "exempt"? II. 39. What are sacred places? IV. 39, at the end. From where can the Mass be heard? VI. 35. If a crime is committed publicly in one place, is it licit to reveal it in another? XI. 12. What kind of place is required for ordination? Apostolic Constitution III. 43 to X. Where should Mass be said? 114. What if a church is polluted? 116 and 128. Locatio (lease). What is a lease? X. 295. What can the successor of a lessee do? 206. In the case of sterility, when is remission due? 207. Whether the right to beg can be revoked, 208, at the end. Tabellari (table). Concerning payment, 209. Locutiones spirituales (spiritual conversations). What are they? Apostolic Constitution X. 21. Lucrum (profit). Whether liberal works for profit on a feast day are licit, VI. 8 and 9. Whether it is licit to work for a great profit, 22. Whether one may omit something sacred, 43. Whether a loan with the expectation of profit is licit, X. 143. Whether a profit given gratuitously in a loan can be retained, 144. Whether it can be retained if given under fear, 145. Concerning profit ceasing, 148 to 152. Ludus (game). How does a vow not to play games obligate? V. 30. When do religious sin by playing

games? X. 215. Concerning frauds in games, 216. Games prohibited to laymen, and whether the winner can retain what he wins, 217. Whether the loser is bound to pay, 218. Concerning games prohibited to clerics, 219. To religious, 220. To bishops, 221. Concerning a license given to religious to play games, XIII. 14. Lunatici (lunatics). Whether they are irregular, XIX. 113. Maledictio (curse). Whether a curse against a creature is blasphemy, V. 2. Whether a curse against the dead is licit, 3 to 11. Against the living, V. 8. Malum (evil). How many sins does one commit who desires different evils against an enemy? III. 65. Whether one sins by suggesting a lesser evil to avoid a greater one, IV. 30. Mandans (commanding). Concerning restitution, X. 42 and 43. Whether the one commanding incurs a penalty, XIX. 7. Whether a blow by a cleric is a sin, 49. When does one become irregular? 97 and 98. Manducare (to eat). If one breaks his fast by eating several times, is it to be considered as having broken the fast? XII. 20 to 21. See Abstinentia (abstinence). Manus (hands). Concerning the extension of hands in Confirmation, XIV. 41. Whether the right hand or an instrument is used for unction, etc. 42. Concerning the imposition of hands in Ordination, XVII. 16. Manuscripta (manuscripts). Whether they are the property of religious, XIII. 5. Whether heretical manuscripts can be read, XIX. 59. Maritus (husband). What vows can irritate the wife? V. 36. The husband's obligation, VII. 12. If an adulterer kills his husband, does he incur irregularity? VII. 20. Martyrium (martyrdom). Whether one can offer oneself for martyrdom, XIV. 7. 20. Mater (mother). Whether she can take medicine with a danger to the child, etc. VIII. 25 and 26. Whether she is bound to expose her child for baptism, XIV. 9. Materia gravis (grave matter). Obligating under a light penalty, II. 14. Concerning the change of matter in an oath.

[*Latin ed. p. 860*]

847 INDEX ALPHABETICUS V. 19. Concerning vows, 35. Whether the reserved matter remains after a change, 48. What is considered a grave matter in theft, XI. 22. The matter of Baptism, XIV. 7, 8, and 9. The matter removed in Confirmation, 39 and 40. The proximate matter, and whether the extension of the bishop's hands, etc., is required, 41. The proximate and remote matter of penance, XVI. 1. Whether confessed sins are sufficient matter, etc., 3. The remote matter of Extreme Unction, XVII. 2. Whether all the matters and forms in the species are determined by Jesus Christ, 15. The matter of Matrimony, XVIII. 28. The matter of the sacraments, App. III. 5. The equality of matter with form, 6. The change of matter, 7. Doubtful or mixed matter, 8. The matter of ordination, 29. (See also XVII. 16.) A small amount of matter in the recitation of the office, App. III. 69. The matter of the sacred order must be given by the same ordaining person, 29 in fine. The matter of subdiaconate, 57. Diaconate, 90. Priesthood, 92. (And more fully, XVII. 16.) The matter of the Mass, namely, bread, 97. Wine, 98.

Concerning the presence of matter in the Mass, 99. Eucharistic matter, 98 to 181. Matrimony. Whether the Church is polluted by the use of marriage, IV. 39. A fictitious promise of marriage with defloration, to what extent it obligates, X. 93. To what extent, if the deflowered woman refuses marriage, 96. Whether a parish priest can assist at a public marriage of sinners, XIV. 6. In marriage, whether he should admonish the penitent, XVI. 413. Whether, if the bride and groom are already prepared, etc., 114. Whether, in doubt, marriage should be favored rather than freedom, XVIII. 6. What if someone contracts marriage after betrothal, etc., 13. Matter, form, and minister of marriage, 28. Dispensations, 29. If a parish priest assists sinners, how does he sin; and how many commit sacrilege, the bride and groom who contract marriage in mortal sin, ibid. Whether it is permissible to simulate the celebration of marriage, ibid. ad 2. Whether by a procurator, ibid. ad 3. Concerning clandestine marriages, ib. ad 4. If a parish priest assists in sin, and if he omits "I join you together," etc., does he sin, ibid. ad 5. Whether it is required in the convalidation, and if he omits "I join you together," etc., ibid. The ends of marriage, 30. Whether consent given by signs is valid, 31. Whether marriage can be contracted by procurators, or by letters, 32. Whether a conditional consent is sufficient, 33. Whether, if the condition is fulfilled, a new consent is required, 34. Whether it is permissible to contract marriage in doubt, etc., 35. Dispensations concerning publications, vows of chastity, and impediments to marriage, XX. 64, remissive. Concerning doubtful diriment impediments, 55. Certain diriment impediments, 56 and 57. Spiritual marriage concerning contemplation, App. I. 18. Concerning the use of marriage, see Uses. Matins, at what hour it should be said, App. III. 74 to VI. Matins for the dead, ibid. Whether Mass should be said before Matins, ibid. ad V. A physician is obligated to use safer remedies, I. 23. Whether he can administer medicine to pregnant women, VIII. 23 and 24. The obligation of a physician to impose confession, and concerning the medical interrogations to be made, tr. ult. 33 ad. V. Meditation. The necessity and manner of meditation, App. I. 2 to 5, and App. IV. § 3. Medium and Mediator. Extraordinary means are not to be used to preserve life, VIII. 2. Whether someone can satisfy for two Masses with one medium, VI. 34. The mediator, if he does not make restitution, to what extent is the penitent obligated, X. 106. The member in which baptism should be given, XIV. 11 and 12. Mendicancy. See Regulars. Menstruation, whether it impedes from Communion, XV. 68. Whether it impedes from the use of marriage, XVIII. 38 in fine. Mental. Whether a mental restriction is permissible, V. 15. Mental simony, XIII. 58. Concerning the medium. Lying in confession, whether it is sacrilegious, XVI. 28. How much do voluntary fees decrease? XI. 174. Whether prostitutes can be permitted, IX. 12. Fear. Whether betrothals contracted under fear are valid, XVIII. 5. Whether censure, XIX. 3, in fine. Whether fear excuses from censure, 8. See Fear. A soldier, whether he should persist in danger, VIII. 1. Whether he can wage war in doubt

whether the war is just, 31. Threats. If a penitent threatens death, whether the confessor can avoid him, XVI. 163. Minister and Ministrant. Who is the minister of Baptism, XIV. 15 and 16. Confirmation, 44. Extreme Unction, XVII. 6. Marriage, XVIII. 28. The intention of the minister, App. III. 9. Who is the minister of each sacrament, 10. Whether he must be in the state of grace, 11. If he is a layman, or if he does not administer solemnly, is contrition sufficient, 12. Whether a priest, if he absolves in mortal sin, can administer Communion, or whether a subdeacon can, and does he sin, 13. Whether a subdeacon, 14. What if he administers to an unworthy person, 15. Whether he who simulates the administration of a sacrament sins, 16. Whether he must intend what the Church does, 18. Whether it is permissible to receive the sacraments from an excommunicated minister or a sinner, 20. Whether it is permissible to give money to a minister, etc., 21. Who is the minister of Holy Orders, 30. Minors, if they receive a loan, whether it can be recovered, X. 140. Whether they can be obligated and donate, 234. Mass. What intention is required to hear Mass, VI. 27. What attention is required, 28.

[*Latin ed. p. 861*]

RECORDS OF NOTE. 849. Whether reciting the Office satisfies the obligation of Mass, 29. Who celebrates, 30. Who confesses, 31. Who dozes, or collects alms, 32. What omission is considered a minor matter, 33. From where can this be ascertained, 35. Oratories, and where a bishop may celebrate, etc. 36 and 37. How many Masses can be celebrated in a private oratory, after no. 38 in App. Claus. V. Can a bishop dispense with attendance at Mass, etc. 38. Impotence excuses from Mass, 39 and 40. (Regarding the sick person having an oratory, see XX. 3.) Does inconvenience excuse, 41. Usage, 42. Does scandal, or profit, or confession, etc. excuse, 43. The obligation of the parish priest concerning Masses, VII. 29. Conventual Mass, what it is and to whom it is to be applied, ibid. at the end. The bishop must oversee the Masses, etc. 58. Concerning the bishop's Mass, 65. If the confessor imposes Masses, and the lord is certain, whether the thief is still bound to make restitution. X. 106. Is Communion in a Mass for the dead permitted, XV. 16. The stipend for a Mass, 59 to 73. (And App. III. 106.) Prescriptions concerning Masses, XV. 74. To whom is it permissible to reduce Masses, 76. If revenues are lacking, etc. 77. Concerning Gregorian Masses, 78 at the end. Does a priest sin who completes a Mass in less than a quarter of an hour, 84 to 86. Catalog of decrees, 88. Regulars cannot, against the bishop's prohibition, admit outsiders to celebrate in their churches, XX. 75. Are they obligated to give an account of legacies for Masses, 81. What if concerning churches, App. III. 29 at the end. What is a Mass, 96. Requirements for a Mass concerning matter, 97 to 99. Formula, 100. Effects, 102. For whom it can be offered, 103. Fruits, 104. Value, 105. Is delaying a Mass a sin, 107. Is retaining a portion of the alms permissible, 108. Concerning the application of a Mass, 110. The obligation of priests to celebrate, 111. Rubrics, 112. The

time when Mass can be said, whether before Matins, or on the Feast of the Lord's Supper and on the holy Sabbath, 113. The place for celebrating, 114. Requirements, namely, on the Feast of the Lord's Supper and on the holy Sabbath, 115. The place for celebrating, Palla, 120. The Missal, 121. The Cross with the Crucifix, 122. Three Masses assigned to newly ordained priests, 124. Mass to be said solemnly, briefly, etc. 125. Votive Masses, 126. Is it permissible to sacrifice more than once in a day, 127. If a church is desecrated, is it permissible to celebrate, 115 and 128. The Missal. Are all the rubrics of the Missal obligatory, App. III. 112. The Missal required for Mass, 121. Mixing. Ownership is acquired by mixing, X. 9 to 6. Whoever receives from a thief a mixed thing with that of the thief, to what is he bound, 75. Is a Mohatra contract permissible, X. 182. Monk. When can a monk's assault be absolved by the bishop, XX. 46 to 48. Monastery. If the father compels daughters to enter a monastery, does he sin, VII. 5. Concerning the servants of monasteries concerning the Paschal Communion, XX. 42. Is the seal damaged if a monastery is excommunicated, XIX. 29. See Cloister. False money cannot be spent, X. 204. Nun. The bishop's care concerning monasteries of nuns, VII. 61. To what must they obey, XIII. 21. Concerning the election of the abbess of nuns, 22. It is also forbidden for nuns to be godmothers, XIX. 37. Concerning the confessors of nuns, XVI. 89. Whether the confessor, in order to enter a monastery, must have permission, XIX. 37. Whether a doctor, 38 and 39. Concerning conversation with a nun, 40 to 45. If a nun breaks her enclosure, does she incur excommunication, 46. The bishop's power concerning the enclosure of nuns, XX. 66. Concerning the approval of the confessor, 67. Nuns exempt from tithes, 87. Concerning a tomb in the churches of nuns, 92, at the end. Questions to be asked of nuns in confession. Tract. ult. 32. Admonitions. See Note. Admonition to be given to penitents, XVI. 106 and 107. What if it will not be beneficial, 108 to 112. If the marriage is null, whether the confessor should admonish the penitent, 113. Whether if the betrothed are already in the church, 114. Admonition concerning restitution, and what if it is hoped that it will be beneficial later, 115. What if the penitent asks, and if there is a common loss, 116. In case of doubt whether it will be beneficial, ibid. Admonition to be given to penitents who are concerned, 178. What is a monitorium, XIII. 75. When is a monopoly permissible. X. 183 and 184. Monstrous things are irregular, XIX. 124. Are houses of piety permissible, X. 155. A dying person, if he gives signs to penitents, 37. If, in the act of sin, he loses the use of his senses, 38. Can he be absolved by avoiding, 92. Is a dying person bound to receive Extreme Unction under pain of sin, XVII. 12. Is he bound, by letters in papal censures, to request permission from his superior, XVI. 98. Can he be absolved from papal censures by any confessor in the presence of the bishop, XX. 45. How should the confessor behave with the dying, tract. ult.

46 and 47, and App. II. § IV. Death. See Necessity and Peril. 54.

[*Latin ed. p. 862*]

850 INDEX ALPHABETICUS

Mortal sins, how many ways are they venial, III. 67. And how many venial sins are mortal, 69. He who exposes himself to a probable mortal danger, how does he sin, 69. He who, after confession, remembers a mortal sin, can he receive Holy Communion, XV. 23. What if he doubts, 34. What if scandal is present, etc. 24. Mortification. Is it permissible to shorten one's life through penances, etc. VIII. 2. Affective mortifications, App. I. 25 to 27. Dead. See Deceased. A woman showing her breasts, how does she sin, IV. 29. How does she sin by allowing herself to be touched, IX. 5. Or violated. 7. Is she then obliged to cry out, 6. How does he sin who forcibly places a woman in a monastery. VII. 5. Does a woman, if she strikes a cleric, incur papal excommunication, XX. 47. Concerning questions to be asked of young people who adorn themselves with women's things. Tract. ult. 36. How should the confessor behave with women. 54 and 55. See also Wife. Worldly. He who curses the world, does he sin, V. 2. To change and change. Can marriages be dissolved due to a notable change, etc., or due to an inheritance, or a better opportunity. XVIII. 19. Is it permissible to change confessors. Tr. ult. 43. Substantial and accidental change in the Sacrament. App. III. 7. See Permute, Matter and Testator. Mutilation and Mutilation. Is it permissible for the sake of preserving life. VIII. 3. Can one's genitals be removed. ibid. Irregularity is incurred by mutilation, XIX. 109 and 110. What is understood by the term mutilation, members 109. Mute. Is he excused from the material integrity of confession. XVI. 35. When is he irregular. XIX. 118. How should the confessor behave with the mute and the deaf. Tr. ult. 44 and 45. Loan. When must it be repaid, X. 139. If a loan is given to minors, 140. To wards, 141. Under the hope of profit, 143. Out of fear, 145. Is it permissible to demand something in a loan due to a long-term agreement, 146. Due to emerging damage and lost profit, 147 and 148. Admonition is required, 149. So that the profit does not exceed the hope, 150. So that the loan is the cause of damage, 151. Concerning the danger in a loan, 153 and 154. Concerning the conventional penalty, 156 and 157. With a benevolent intention, 158. Concerning binding agreements. 159 to 161. Loan. Is a mutual promise required in betrothals. XVIII. 4. Must there be external signs in a loan; and what if the father promises in the name of the son. 5. Betrothals are dissolved by mutual consent, what about minors, 14. Mysteries. Concerning the necessity of the medium and the belief in precepts, IV. 3. Nares. Tobacco consumed through the nostrils, does it break the fast, XV. 38. Does water through the nostrils, etc. 41. Births concerning irregularity, XIX. 126 to 128. Who can dispense in this matter, and are the regular clergy, 37. (See also XX. 104 and 105.) Necessity. What is the ex-

treme necessity; and what if one is noble, etc. X. 15. If a thief consumes stolen goods out of extreme necessity, is he obliged to make restitution, 19. If a rich man does not help a poor person, 20. Are we obliged to help a neighbor in extreme necessity, with a probable danger of sinning, IV. 14. Are pastors in grave necessity, etc. ibid. and VII. 28. Concerning extreme, grave, and common necessity, IV. 18 and 19. Correction does it obligate with the danger of life, 22. Necessity excuses from the feast, VI. 18 and 21. When from restitution, X. 118 to 120. Is it permissible to leave parents in necessity for the sake of entering a religious order, XIII. 23. Are sons or brothers, 24. Is it permissible to confer a doubtful sacrament in necessity, XIV. 3. What if Baptism is doubtful, 27. Is the Eucharist a necessity of the medium, XV. 2. Necessity when it excuses from confession before Communion, 24. What if there is a lack of confessors at that time. 26. Necessity excuses from the integrity of confession, such as a battle, shipwreck, etc. XVI. 39. A simple priest can absolve in necessity, App. III. 130. to Notand. III. Moral necessity of mental prayer, App. I. 2 to 5. and App. IV. § 3. Business. To whom is it forbidden; and can a cleric engage in business through others, or with others, X. 192. Whether, as in one's own pastures, etc. 193 and 194. A son who engages in business with his father's money, etc. X. 3 and 228. Knowledge. He who uses knowledge of confession for the aggravation of penance, does it break the seal, XVI. 156. Because of the knowledge of confession, can the confessor protect himself from harm, 161. Nullity. Causes of nullity of profession, etc. XIII. 3. Concerning the revalidation of null marriages, XVI. 44 to 46. Should the confessor admonish the spouses in a null marriage, 113. Should the betrothed who are preparing to enter into marriage, 114. Is the reservation removed by a null confession made to a superior, 141 to 143. If the impediment is removed, should the nullity be revealed to the ignorant, XVIII. 81. How should consent be obtained, 82. Numerical distinction of sins, III. 57 and following.

[*Latin ed. p. 863*]

REMARKABLE MATTERS. 851. Whether the non-days are prohibited on festive days, VI. 13. News, concerning donations made through a messenger, X. 130. Obedience. When the vow of obedience is binding, XIII. 16. If a chapter reforms the rules, etc.; and whether disobedience is a double sin, 17. Whether one must obey in a doubt as to whether a thing is lawful according to the precepts, I. 15 and 16, and XIII. 17. Whether a subject is bound to obey if a superior commands him to reveal a secret entrusted to him, 18. If a superior grants a license to an inferior, etc., 20. Concerning the obedience of nuns, 21. Concerning the election of an abbess, 22. The object of Faith, what it is, IV. 2. Of Hope, 7. Of Charity, 9. The object of sin falls under obligation, XVI. 153. To obligate and Obligation. Signs by which it is known when the law gravely obligates, II. 15. Whether the law can remove a natural obligation, 19. The obligation of a vow is light in a

serious matter, V. 29. The obligation of children, VII. 1 to 3. Of parents, 4 and 5. Of brothers, 6. Of lords, 7. Of servants, 8. Of a husband, 12. He who swears without the intention of obligating himself, does he remain obligated, X. 122. Whether the law removes a natural obligation in a contract without solemnity, 126. Concerning a promise, 127. Concerning a donation not accepted, 130. Concerning a loan granted with usury, 140. The obligation of usurers and of those who lease, 162. Those who cooperate in usury, 163 and 164. The obligation of reading the goods of those who are joined together, 237. The obligation of secrecy, XI. 9. The obligation of a beneficiary, XIII. 45. Of a godfather at baptism, XIV. 31. The obligation of conferring Confirmation, 46. Of receiving it, 47. Whether he who receives the orders must be confirmed, 48. The obligation of imposing penance, XVI. 48. And of imposing it at least lightly, 49. To whom is the dispensation granted, 59. He who fulfills it in a mortal sin, 60. Who can change it, 61. The obligation of receiving confessions, and whether with danger, etc., 125. Of receiving the Anointing of the Sick, XVII. 12. Marriage, if made with a good intention, etc., does it obligate, XVIII. 1. The obligation of fulfilling the marriage, 8. Concerning the obligation of him who promises himself to two women, 9. What if a son, without the consent of his father, etc., 10. The obligation of the confessor to question, admonish, and dispose the penitent, XXI. 2 to 4. The obligation of wearing the habit and tonsure, App. III. 49 and 50. Of celebrating within a year, 111. Observance. What are vain observances, IV. 36. In a doubt as to whether an effect is natural, what is to be presumed, 37. Whether it is permissible to use powder, sympathetic remedies, ibid. Midwives ought to examine by opportunity, VII. 51. Opportunity. Whether a father can deprive his sons of the opportunity to steal, etc., IV. 30. Solicitation by opportunity in confession, to be denounced, XVI. 167 and 168. Concerning a proximate, voluntary opportunity, tract. ultim. 1 and 2. Concerning the opportunity of betrothed persons, etc., and of those who make love, 3. Concerning opportunities that are in existence, and those that are not in existence, and when absolution ought to be given, 4 and 5. Concerning a necessary opportunity, 6 and 7. Whether it is permissible to kill oneself indirectly, VIII. 1 and 2. To yield a table, a fire on a ship, etc., ibid. To a guilty person, it is not permissible to flee for the defense of life, under extraordinary circumstances, or to surrender oneself to the hands of a judge, 2. Whether it is permissible, for the defense of life, to kill unjust aggressors, the opinion of a certain modern is refuted on this point, 12. Concerning the killing of tyrants, and whether it is ever permissible, 13. Concerning the one who invades honor, 14. Concerning robbery, 15. Concerning chastity, 16. Concerning one's neighbor, 17 and 18. Whether it is permissible to prevent, 19. Whether it is permissible to kill an adulterer, 20. An innocent person, 21. Concerning abortion, 22. Whether pregnant women who procure an abortion incur excommunication, 23. Whether, in a doubt, the fetus is animate, 24. Whether it is permissible for a mother to

take, administer medicine, etc., 25 and 26. See Homicide. Occult. When an impediment is said to be occult, XVIII. 77. What if it is known to the parish priest, and to witnesses, 78. A hidden crime concerning an irregularity, XIX. 82. When is it said that a crime is occult, XX. 33. What if a homicide is entirely occult, 51. If it is accidental, 52. Hatred. How does he sin who desires different evils, III. 65. How does he sin who, with hatred, prevents someone from a good, X. 63. Offense. Whether, for an offense caused, the offended party is bound to compensate with money, X. 83. Office. From whom should the office be recited in burying, etc., in the churches of regular canons, XX. 29. Dispensations of the regular canons in the office, 107. The office of the doorkeeper, App. III. 53. Of the reader, 54. Of the exorcist, 55. Of the acolyte, 56. The office for the dead, whether there is an obligation to recite it, 72. The office of a deacon, 91. See Canonical Hours. Omission. For omission, a positive act is required; and when is it imputed, III. 45. How does he sin who omits correction for fear, IV. 21. Works and Work. He who thinks that only works are sins, does he sin by desiring them, I. 6.

[*Latin ed. p. 864*]

852 INDEX ALPHABETICUS: What sort of service is to be called servile, VI. 7. Whether it is permissible for infidels to impose a servile work on a feast day, I. at the end. Whether liberal works are permissible for profit, 8. Whether to furrow, 9. Whether to paint, 10. Whether to go hunting, etc., 11. Whether forensic works are permissible, 12. Whether market days and contracts are permissible, 13. See Labor. Opinion. Which opinion is a doctor bound to follow, I. 23. A judge, 24 and XIII. 65. Which a minister in conferring sacraments, I. 25. Which in necessity, 26. In Matrimony and Penance, 27. Which, if reason convinces, 28. Which opinions are to be chosen, 29 and following. Which in war, VIII. 29. One cannot begin possession with a probable opinion, X. 8 and 144. Whether it is permissible to use a probable opinion concerning a seal, etc., XVI. 164. See Probable. Prayer. Concerning prayer to gain an indulgence, XVI. 65. Mental prayer, necessity and manner, App. I. 2 to 5, and App. IV. § III. Oratory. Concerning oratories, VI 36 and 37, (and more fully after n. 38, in the appendix on private oratories.) Where can a bishop celebrate, 37 at the end. (And XX. 62 and 63.) Can a bishop dispense to celebrate at home, XX. 64. Those to be ordained must be approved, VII. 48. Concerning positive requisites, 50 and 51. Concerning knowledge, 52. The matter must be received from the ordaining priest, and he himself must celebrate, App. III. 29 at the end. Ordaining. The matter must be received from the ordaining priest, and he himself must celebrate, App. III. 29 at the end. Ordinary. Who has ordinary jurisdiction, and whether he can delegate it, XVI. 81. (And XX 34 and 58.) Order of goods concerning charity, IV. 14. Of persons, 15. How does one sin who takes away from another order, or from that person, XI. 16. Who does not have the intention of entering an order within a year, etc., XIII. 42. Who has a doubtful or

conditional intention, does he sin gravely or is he bound to restitution, 43. Concerning regulations concerning receiving orders, etc., XX. 113. Concerning novices, 114. Whether they can be ordained outside of the proper times, 115. Whether on a feast day by command, 116. Whether orders can be given by regulars, 117. Whether to seculars, both subject and not subject, ibid. and 120. Whether to novices, 119. What is an Order, App. III. 25. How many are there, and whether episcopates are included, etc., 27. Whether each order is a sacrament, 28. (See more fully on this, XVII. 14.) Matter and form of an order; whether physical and simultaneous touch, etc., App. III. 29. Minister, 30. Effect, 31. Order to be received from one's own bishop, 33 to IV, and who is one's own bishop; and from whom do regulars receive, etc., 34. What if someone is ordained by jumping, 40 to VII. Requisites for one to be ordained, 32 and 46. Order of hours, 74 to V. Doorkeeper, what, power and office, App. III. 53. Contemplative leisure, what, App. I. 7. Pact. Whether it is permissible to not repeat a vow for a long time, X. 146. Concerning conventional penalties, 156 and 157. Concerning obligatory pacts in a loan, 159. Concerning restoring in the same quantity, 160. Concerning rendering what is due by justice, or charity, 161. Concerning demanding fruits until payment, 170. Concerning retroversion, 180. Concerning re-emption, 181. Concerning contracts. Mohatra and Antechryscos, commonly called "a godere," 182. Concerning monopoly, 183 and 184. Concerning a pact for a safe head; and concerning supplying dead animals, 226. Pact concerning salary in the progress of a lawsuit, and concerning a share of the lawsuit, whether it is permissible, XIII. 71. Whether pacts concerning the missa are permissible, XV. 64. Concerning not appealing from a sentence pronounced for the nullity of a marriage, XVIII. 11 at the end. Pallium, what is required to celebrate, App. III. 120. Who is called a Palpo, X. 51. Pope and Papal. Definitions of the Pope are infallible, II. 33. He is above councils, ibid. In what can he dispense, 55 and 56. (And XVIII 83.) Whether he can dispense in vows solemnly made, V. 50. Whether he can change last wills, X. 236. Whether he can dispense with those ordained for marriage, etc., XVIII. 65. Whether in a ratified marriage, 90 near the end. Whether a simple confessor can absolve from papal penances before a superior, XVI. 97. Difference between papal and episcopal cases, and there concerning false accusation and solicitation, and concerning the reception of gifts from religious. 129. Paraphernalia, what goods are called, X. 5. Parents. The love due to parents, VII. 1. Obligation of parents concerning legitimate maintenance and dowries; Decree of the Four Doctors, 4. If they prevent their children from following their vocation, or force them to enter a monastery, how do they sin, 5. Can a son leave poor parents, XIII. 23. Can one become a religious against the will of the parents, 24. Can parents abandon their children, ibid. If unbelieving parents resist the baptism of their children, is it permissible to baptize them, XIV. 21. Is it permissible to sell their unbaptized children to them, 22. If parents baptize, do they incur

an impediment to claiming their due, 34. If

[*Latin ed. p. 865*]

RECORDS OF NOTE.

853. A son, against his father's will, enters into betrothal; can it be dissolved? XVIII. 17. See also Father, Parochus. In what cases can dispensation be granted? II. 59 and VI. 14. The duties of a parochus, and especially regarding residence, VII. 4 and following. Is he bound to correct with the danger of life, and to investigate crimes? IV. 22. Is he obligated to preach? VI. 5 and VII. 35 and 36. Concerning those things about which one must preach, 37 to 44. Can a parochus become a religious? AIII. 29. What is the parochus obligated to do concerning godparents? XIV. 38. Concerning the conservation and dispensation of the Eucharist. XV. 8. For whom must he celebrate? 72. Can he assign other parish priests from another diocese to hear confessions in his church? XVI. 77. Can he himself? 78. Does a parochus sin if he assists at the marriage of sinners? XVIII. 29 to 1. If he objects? ibid. to 4. If he is in sin, and if he omits the words "Ego vos conjungo," etc.? Ad 5. If the marriage is validated? Ad 6. If a parochus is aware of an impediment, is he bound to prevent the marriage? 57. In what ways can dispensation be granted in cases of denunciation, or declaration, etc.? 59. Is the assistance of a parochus required? Pars. Does one sin if he retains a portion of the Mass stipend? XV. 65 to 71. What are ecclesiastical goods? X. 6. A participant, in the case of theft, to what is he bound? X. 54. If many set a house on fire, to what is each one bound? 55. Father. If a father promises betrothal for his son, are they valid? XVIII. 2. Patria. See Peregrinus. Pauper. To which poor people must the fruits of a non-resident pastor be restored? VII. 23. Is a poor person bound to ask for assistance, etc.? X. 17. Can he receive something of great value? 18. Is a person feigning poverty bound to restore what he has taken? 78, at the end. Can the right to beg be revoked? 208. To which poor people should surplus ecclesiastical goods be given? XIII. 47 and 48. See Necessitas. Paupertas. Are manuscripts the property of a religious? XIII. 5. Concerning the peculium, 6. When is the vow of poverty violated? 7. Concerning the prohibition of donations, 8 and 9. Concerning serious matters and restitution, 10. Concerning presumed license, 11. When unjustly denied, 12. For vain uses, 13. For games, 14. Sin and peccatum. Concerning the difference between sins. III. 22. Venial sins also violate divine law, 23. Concerning advertence, 24 to 39. Concerning consent, 40 to 45. What is called a philosophical sin, and is it mortal? 46. Concerning desire, 47. Concerning sluggish pleasure, ibid. up to 54. Concerning specific distinction, 55 and 56. Numerical, 57 to 63. Concerning total objects, 64 and 65. Mortal and venial effects, 66. In how many ways does a venial sin become mortal? 67. And conversely, how does a mortal sin become venial? 68. Does one sin if he exposes himself to a probable

mortal sin? 69. Is a vow to commit venial sins invalid? V. 25. Concerning sins in cause, VIII. 8. Is a confessed sin sufficient material for absolution? XVI. 3. Are confessed sins to be distinguished from unconfessed sins? 4. Does general sorrow suffice? 12. How should sorrow for venial sins be elicited? 23. A doubtful sin, is there an obligation to confess it? 30 to 32. Concerning dubiously confessed sins, 33. What if they later become certain? 34. Concerning an accomplice in a heinous sin. 35. Can a penitent in a mortal sin satisfy for his sin? 60. Can one who sins during the Jubilee year be absolved? 69. Concerning the judgment of sin, 104. What if a penitent denies or conceals a sin? 120. Does one sin by concealing venial sins, or internal sins, or sins that have not been consummated? 132. Do they fall under the seal? Can an accomplice in venial sins be admonished with the permission of penance? 152. Circumstances of sins concerning the seal, 153 to V. Does one break the seal if he reveals the sins of a town? 158. If a spouse requests something with mortal sin, is the other bound to give it? XVIII. 46. If he wants to sow outside the vessel? 47. If he requests something with venial sins? 48. Is a grave sin required to incur censure? XIX. 7. See Delictum. Peccator. If the Sacrament is requested to deny it. XIV. 4 and XV. 15. Can Communion be given? XVI. 5. If the spouses are in sin, can the parochus assist at the marriage? 6. What is the peculium of a religious? XIII. 6. Pension and Pensionarius. Is a pensionarius bound to give surplus goods? XIII. 49. Concerning the pension, 59. Concerning pensions for excommunicated persons. XIX. 19. Percussio and Percussor. When is a percussor to be avoided? XIX. 16. When does one incur excommunication? 48 to 52. What kind of percussio is a light, grave, or enormous offense for a cleric? XX. 46. Concerning absolution from it. 47. In case of doubt, whether it is grave, light, etc., how should it be judged? 48. Peregrinus. Is he bound by the laws in common? II. 39. By the laws of his domicile, or quasi-domicile? 40. By the laws of the place where he stays for a short time? 41. Is he exempt from the Paschal Communion in his own parish? XII. 42. To whom can he confess? XVI. 87. To which religious can a peregrinus confess? 88. Can a peregrinus be censured? XIX. 6. Concerning peregrini. When is a case reserved to the proper jurisdiction, and when only to the patria? XVI. 135. How is "reserved to the proper jurisdiction" understood? 136. Can one who sins in his patria be absolved outside of it by one who has the power? 137. Can one who sins outside his patria be absolved in his patria, and can one who sins in his patria be absolved from censures outside of it?

[*Latin ed. p. 866*]

854 INDEX ALPHABETICUS: That, and whether a sin committed outside [the monastery] incurs censure. See there, reserve 138. A pilgrim, if he speaks with nuns, does he incur excommunication? See XIX, 44. Can a pilgrim, virtuous [as he is], be absolved from sins and irregularities? See XX, 32. Perfection. To which the Religious are bound. See XIII, 2. Rule and

exhortation for perfection. See App. I, 37 and 38. Danger. Whether he who exposes himself to probable mortal sin sins. See III, 69. Whether, in such a necessity, one should help a neighbor in danger. See VI, 14. Whether one should correct with danger to one's life. See 22. Whether one should expose oneself to danger in order to preserve chastity. See VIII, 1, end. Concerning the title of danger in a loan. See X, 153 and 154. To whom does the danger pertain in a purchase? See 169. To whom, if the thing purchased would have been for life, belongs to the Lord? See 79. Whether it is permissible to celebrate the sacraments without fasting, if life is at risk? See XV, 52. Whether to give death, if life is at risk. See 55. Whether there is an obligation to receive confession when life is at risk, etc.? See XVI, 125. Whether the use of marriage is permissible when health is at risk? See XVIII, 38. Whether there is an obligation to repay a debt? See 49. To perish. If the thing in the hand of the Lord also perishes, what must be restored? See X, 79, end. To whom does the thing sold perish? See 191. Whether, if the foundation perishes, does the census perish? See 201. Whether it is permissible to allow one's own death. See VIII, 1 and 2. Whether a woman who allows herself to be touched sins. See IX, 5. Whether it is better to be held to suffer death than to violate oneself. See 7. Whether it is lawful to exchange sacred things. See IV, 47. He who exchanges Masses, can he retain the stipend? See XV, 71. Can a chaplain exchange a church or altar, etc.? And what if it is privileged? See 75. Who can change the penance? See XVI, 61. Perseverance. The oath of perseverance in a congregation, from whom it must be relaxed. See V, 19. Personal vows can be changed into real vows, and vice versa. See V, 38. Whether prior personal credits are to be preferred. See X, 112. Whether a personal census is permissible. See 199. Persons who enjoy privileges of canon law and of the forum. See XX, 21 and 24. How should a confessor behave with pious persons? See Tract. ult., 42 and 43. Plague. The obligation of priests during a plague. See IV, 14. Of parish priests. See VII, 28. Pharmacists, to be questioned, etc. See Tract. ult., 34, to VI. Piety. When does piety excuse from working on a feast day? See VI, 16. Concerning the mountains of piety. See X, 155. When does piety excuse from fasting? See XII, 34. What is a pledge? See X, 233. Whether painting is a servile work. See VI, 10. Plurality of benefices, by what law is it forbidden? See XIII, 40 and 41. Whether a regular [cleric] can use a water closet outside his own church. See XX, 76. Penalty. In the law, if there is a penalty and a precept, does it obligate to guilt? See II, 16. Concerning penalties that incapacitate, and privative penalties. See 24 and 25. Concerning duelists. See VIII, 28. Concerning sodomites. See IX, 26. Concerning conventional penalties. See X, 156 and 157. Concerning those who violate the precept of Easter. See XII, 38. Whether a judge can diminish the penalty. See XIII, 64, to Note 2. When the penalty is great, whether the guilty party is held to confess his fault. See 83. Temporary penalties concerning attrition. See XVI, 17. A penalty imposed on betrothed persons.

See XVIII, 11. When is there an irregularity in the imposition of a penalty? See XIX, 84. Penale. To what do penal laws obligate? See II, 24. Is a penal vow reserved? See V, 49. Penitent. Whether the presence of the penitent is necessary. See XVI, 5. To what is the confessor bound if the penitent, when questioned, holds a certain opinion? See 116. If he holds a probable opinion. See 119. If he denies or is silent about some sin. See 120. Whether one absolved by an inferior, with reservations, if there is some urgent cause, must afterwards present himself. See Super 133. Whether he is bound to the seal which is required by counsel from the confessor, by the penitent's license. See 149. Whether the counsel is from the penitent himself. See 150. Whether, with the penitent's license, one can admonish a companion. See 152. What if the penitent is deaf? See 155. How should the penitent's license be? And whether it is permissible to admonish him within the confession. See 156. Whether he who uses the knowledge of confession to the detriment of the penitent breaks the seal. See 159. If the penitent returns with a bad conscience, is he to be heard? See 160. Whether the confessor can avoid the penitent who threatens him with death. See 163. Whether the penitent must offer himself to the Bishop, when he cannot present himself to the Pope, etc.? See XX, 45. Penances imposed on deacons by the Bishop. See App. III, 91. See also Satisfaction. Penitentia. Clauses of the Holy Penitentiary in dispensations for marriage. See XVIII, 87. Formula in suppl. 88. Execution. See 89. Faculties of the Holy Penitentiary. See XIX, 148. Pollution. Concerning pollution by touching a boy or a woman. See IX, 25. Whether semen that has come out is lawful. See 31. Whether we are bound to prevent it from happening of itself. See 32. Whether we should avoid the causes. See 33. Which actions are permissible. See 34. Concerning nocturnal pollution. See III, 52. Whether pollution prevents Communion. See XV, 56. Pollution of the church. See App. III, 115 and 128. Pope. See Papa. Possession and Possessor. When does possession stand for law or freedom? See I, 14. To what is the possessor bound in doubt? See 20. To what is the possessor of good faith bound? See X, 73. Which fruits must he restore? See 74. He who thinks the damage is less than it is. See 76. To what is the bad possessor bound?

[*Latin ed. p. 867*]

RECORDS OF NOTABLE MATTERS. 855: Concerning faith, 77. See prescription. No one is permitted to take possession with a probable opinion, X. 8 and 144. Power. Can one who has ordinary power delegate it, II. 61. (See also XX. 34 and 38.) What is called ordinary, II. 61. Does it expire with the death of the delegator, ibid. How is a delegation to be interpreted, ibid. What beverages are permitted during fasting, XII. 12. Wine and beer, 13. Sorbet, 14. Chocolate, 15. A doubtful case, I. 13. Judgment, 14. Meal, can it be divided during fasting, XII. 10. Precept. Is ignorance an excuse for a precept, I. 5. What does a doubtful precept obligate, 15 and 16. If there is

more than one precept and penalty, II. 16. Can the material of a precept be multiple, etc., 32. Is the precept of a feast divine, VI. 1. Of confession, XII. 36. Of Communion, 39 and 40. The precept to reveal a secret, is it binding, and when, XIII. 18. Are Regulars bound by the precepts of the Synod and the Bishop, XX. 78. Are deacons bound by chastity by precept or by vow, App. III. 59. To preach and preaching. Does preaching about public sins obligate, IV. 22. Concerning the obligation to hear a sermon, VI. 4. The obligation of Bishops and pastors to preach, ibid. and 5 and VII. 35 and 36. What must be preached by pastors, 37 to 44. Where can Regulars preach? And concerning the license of the Bishop, XX. 124 to 128. Concerning the duty of priests to preach, and concerning the necessary knowledge for preaching, App. III. 131 and 132. Pregnancy, does excommunication apply to abortion, VIII. 23. Prelate. Prelates can choose confessors for themselves, and how, XX. 65. See Bishop and Superior. Prelacies. Are they due to those of higher rank, XIII. 35. Prescription of three years, IV. 52. Concerning prescription by the owner and his property, X. 10 to 13. Concerning custom and its validity, 79. Concerning desuetude and its validity, 80. Concerning prescription of salary, VII. 9. Masses, XV. 74. Tithes, XXIII. 84. Are patrons obligated to present those of higher rank, XIII. 34. A penitent absolved by an inferior should, after the impediment has ceased, present himself to a superior, XVI. 133. The presence of the penitent is necessary for absolution, XVI. 5. Also, those who are censured, XIX. 13. Presumption. A fact is not presumed, I. 16. Concerning a law founded on a false presumption, II. 26. Pretext. Concerning solicitude under the pretext of confession, XVI. 169. What is a precarium, X. 135. Prayers, and blessings concerning the dying, App. II. § ult. Presbyterate. Its matter and form, App. III. 92 and 93. Concerning defects to be supplied in its ordination, 94. Price. If the buyer gives credence to the price, the ownership of the thing belongs to him, X. 107. A determination of the price is required, 165. What if credence is not given to the price, 169. Concerning a pact to demand fruits until payment, 170. Concerning one who buys with borrowed money, 171. Concerning a just price, 172 to 174. Sub hasta, 175 to 177. Concerning delay or anticipation of payment, 178. If the price is to be increased shortly, 188. Is it permissible for a cleric to sell something cheaper than he bought it, 194. The price of an unjust sentence, must it be restored, XIII. 67. If the principal is not possible in a vow, the accessory is not to be fulfilled, V. 24. To deprive and deprivation. Deprivation of privileges by revocation, XX. 15. He who has abandoned his habit is deprived of the privilege of the forum, 24. Who should be deprived of burial, 91. Privilege and privileged. When does a privilege derogate from common law, XX. 2. When must a privileged person use his privilege, 3. Concerning the clause of privileges, 5. Interpretation, 6 to 8. Communication, 9 to 11. Does a privilege cease with the death of the Pope, 13. Concerning the revocation of privileges, 15 and 16. Concerning canons and the forum, as to whether notification or publication is required, 17. The privilege of canon

and forum, as to persons, 19. As to goods, 20. As to places, 25 to 28. See Altar and Exemption. Probable and Probability. Concerning a probable matter with harm to another, I. 21 and 28. Concerning a probable matter in matters of faith, 22. Of medicine, 23. Can a judge judge with a probable opinion, XIII. 65. Distinction of probable, I. 29 to 32. Concerning the probable danger of sinning, III. 69. A vow probably fulfilled, to what is one bound, I. 17. Is it permissible to absolve with a probable jurisdiction, XVI. 91. What if a penitent holds a probable opinion, 119. Is it permissible to use it to the detriment of a penitent, etc., 164. See Opinion. Proclamations concerning marriage, XVIII. 55. Can a Bishop dispense, and for what reason, 58. Can a vicar or pastor, 59. Procuration. Is a marriage contracted by procuration valid, XVIII. 32. Is the one who contracts through a procurator to be in a state of grace, 29 to 3.

[*Latin ed. p. 868*]

Procurator of litigations, which causes he may defend, XIII. 72.

Profession. Conditions and causes of nullity of profession, XIII. 3.

Whether a professed, because of the poverty of his parents, is bound to leave, 23.

Whether a religious profession dispenses with betrothals, XVIII. 22.

Offspring. Whether a mother can incur a penalty for failing to baptize her child, XIV. 9.

Whether it is possible to baptize in the womb, and in which member, etc., 10 to 12.

Use of Matrimony with detriment to offspring, whether it is permissible, XVIII. 49.

Promise made under oath to a third party, by whom may it be relaxed, V. 19.

If it is confirmed by a vow, 41.

To what extent is a promise made with a violation binding, X. 93.

To what extent is a simple promise binding, 127.

He who promises a Mass for a small sum, whether he sins gravely if he omits it, XV. 63.

Whether a mutual promise is required in betrothals, XVIII. 4.

Whether it should be made known; what if the father promises for the son, 5.

What if one promises to two women, 9.

Publication of a law, whether it is required for it to be binding, II. 4.

In civil laws, 5.

In pontifical acts, 6.

In decrees of the Holy Congregations, 34.

In a declaration not purely such, 73 and 74.

Pronunciation, with regard to the office, requires a vocal utterance, especially in the choir, App. III. 73 to II.

Complete, 74 to III.

Continued, ibid. to IV.

Propositions condemned concerning duels, VIII. 27.

The purpose of sinning, how long does it endure, III. 60.

If it endures in effect, how many sins does it constitute, 61.

Whether the purpose of someone who believes he will relapse is valid, XVI. 24.

It must be universal, 25.

It must be efficacious, 26.

Whether it must be explicit, ibid.

The proper bishop must ordain, App. III. 33 to IV.

Who is the proper bishop? And from whom are regular clergy ordained, 34, end.

Protestation of the bishop in ordaining, etc., App. III. 33 to II.

Pimp, to what extent is he held accountable, X. 189.

Neighbor. He who prevents a neighbor from obtaining a just good, to what extent is he held accountable, X. 61.

If out of hatred, 63.

Is it permissible to reveal the sin of a neighbor to one or the other, XI. 11.

Publication of the revocation of a privilege, XX. 17.

Dispensation of publications of Matrimony, 54, referring to XVIII. 58.

Is it permissible to manifest a public offense in one place, when it is committed in another, XI. 12.

Whether it is permissible to manifest it publicly at one time, etc., 13.

Concerning public penances, XVI. 53.

Public decency, XVIII. 65 to X. See Hidden.

Girl, whether she can expel semen, etc., XVIII. 50.

How confessors ought to behave with girls concerning confession, the choice of state, and the vow of chastity, Tract. ult. 37 to 41. And App. IV. § II. to III. See Virgin.

Boy. If he has attained the use of reason, is he immediately subject to the laws, 37.

When is he subject to Communion, XII. 23.

Is it permissible to offer Communion to boys, XV. 14.

Concerning betrothals of the impubers, Unct. XVII. 10.

Boys if before the age of seven, betrothals, etc., XVIII. 1.

Concerning betrothals of the impubers, 7.

Whether a boy who strikes a cleric incurs a papal excommunication, XX. 47.

Interrogations to be made to boys, Tract. ult. 37.

Whether absolution should be given to them, 38.

Ward. Whether he can obligate himself, or make a donation, X. 234.

Quality. Error concerning quality, whether it invalidates a contract, X. 124.

Quantity. Whether a pact in a loan to return the same quantity is licit, X. 160.

Fourth funeral, in burial, what and to whom is it due, 93.

Whether it is from the Regulars, 94.

Quiet in contemplation, what is it, App. I. 14.

Root of specific distinction, III. 55 and 56.

Numerical, 57.

Roots of restitution, X. 37.

Rapture, what is it, IX. 15.

Rapture concerning marriage, XVII. 76.

Rapture in contemplation, App. I. 17.

Valid and Ratification. How is marriage to be understood as valid, XVIII. 28.

Whether the Pope can dispense in a valid marriage, 90, end.

Whether he who commits a strike against a cleric incurs excommunication, XIX. 49.

Whether he who commits homicide, irregularity, 100.

Rebaptizers, concerning the penalty for them, XIV. 19.

To withdraw. He who withdraws from betrothals, and concerning the penalty for those who withdraw, XVIII. 11.

Receiver, concerning restitution, to what extent is he held accountable, X. 52.

Recidivists, when may they be absolved, Tract. ult. 8 to 13.

Extraordinary signs, 12.

Natural recollection, whether it is contemplative leisure, App. I. 7.

Supernatural recollection, 13.

[*Latin ed. p. 869*]

RECORDS OF IMPORTANT MATTERS. 857. Revalidation of confessions, XVI, 43 and following. Marriage, XVIII, 77 to 82. Is the assistance of

a parish priest required? 29 to 6. Redemption of Christians; are the wealthy obliged, etc.? X, 16. Income; if it is lacking, can a chaplain reduce the number of Masses? XV, 78. Can the Bishop? 77. Reduction of Masses, XV, 76. If income is lacking, etc.? 77 and 78. (See also XX, 70.) The proximate and remote rule of action, I, 1. Rules for scruples, 8 to 11. Rule: In doubtful matters, the safer part, etc. 69. Rules for interpreting laws, II, 76. Rule for perfection. App. I, 37 and 38. Regular Canons. Are churches and convents of Regular Canons exempt? II, 39. Can the Bishop prohibit the celebration of the Mass in them, etc.? (See also XX, 123 and 124.) In what matters can Regular Canons dispense? II, 60. What if they admit someone for money, etc.? II, 43. Every religious person is bound to strive for perfection, XIII, 2. Concerning religious Bishops, 4. Concerning fugitives and those expelled, ibid. If they go out at night, how do they sin? 15. He who leaves his father in need, etc.; and if he has made vows, is he bound to leave? 23. Does he sin by entering, if his father disapproves? 24. If he leaves his sons or brothers, etc., ibid. He who turns away from his sons, etc. 25. He who neglects his vocation, 26. Those burdened with foreign debts, can they enter? 27. Can a Bishop become a religious? 28. Can a parish priest? 29. Is it permissible to report omissions in the erection of a church? 74 to Note 4. If a religious person plays games, does he sin? X, 211. Concerning games prohibited to religious, 220. Concerning hunting prohibited to them, 72. It is forbidden for Regular Canons to be godparents, XIV, 37. Can they grant dispensations for the Eucharist? XV, 3 at the end. (Concerning the Paschal season, see XII, 41 and 42.) Can a Regular Canon apply the Mass against the will of his superior? XV, 79. Are Regular Canons obliged to confess at least once a month? XVI, 2. Approval concerning themselves, 73. Concerning lay people, 80. Regular Canons who are traveling, to whom can they confess? 88. Concerning a Regular prelate regarding reserved matters, 130. Can he grant dispensations to married couples who have made a vow of chastity? XVIII, 54 at the end. Concerning conversations with nuns, XIX, 40 to 43. Can Regular prelates enter the monastery of nuns? 33 to 39. Concerning the enclosure of Regular Canons, 47. Declarations of St. Pius V, especially concerning preaching in their own churches, XX, 12. They are exempt from the secular court, along with their novices and tertiaries, etc. 21. Exemption of Regular Canons from the jurisdiction of the Bishop. They are exempt from the visitation of the Bishop, 79. Unless there are fewer than 12 religious present, 88. The Bishop can inquire about legacies, etc. 81. When can the Bishop punish Regular Canons? 82 and 83. Regular Canons have the privilege of choosing a conservator judge, 90. They can receive the dead for burial, 92. Must they pay the episcopal portion and the funeral fourth? 93 and 94. They can absolve their subjects from sins and censures, 95 to 97. To reserve cases, 98. Can they absolve seculars? 99. Can they absolve from reserved cases by law, etc.? 100. Can they absolve from papal reservations? 101. Can they be examined again, etc.? 103. Can

they grant dispensations in irregularities? 104 and 105. Can they grant dispensations in ecclesiastical laws? 106. What privileges do they have concerning divine office? 107. Are they exempt from vows and oaths? 108 and 109. To whom must they confess? 110. To whom on a journey? 111. During the time of the general jubilee? 112. Concerning the reception of new members into the order, 113. (See also App. III, 34.) To whom can they confer [privileges]? 117 to 120. Privileges of Regular Canons concerning the celebration of Masses, 121 and 122. Concerning the giving of Holy Communion, 123. Concerning preaching, 124 to 128. By whom can the oath be relaxed? V, 19. Religion. Concerning virtues and opposing vices, IV, 33. To what is one bound who has vowed religious life? V, 34. Do they fulfill their marriage vows by entering into a religious order, etc.? XVIII, 22. If marriage vows have been made, is the betrothed bound to contract marriage before entering religion? 23. Religious. Can a spouse become a religious person after a divorce? XVIII, 97. Can the other spouse remain in the world? 142. Rule for a religious person, App. I, 37 and 38. Concerning the choice of religious state, what can a confessor advise? Tr. ult. 39. Are all religious persons bound to observe the Hours? App. III, 61 to II. See Regular Canons. Relics. Concerning theft of relics, IV, 39 at the end, etc. X, 27. Do relics of food break the fast? XV, 36. Do relics of water, or sugar? 37. Do relics of tobacco? 40. Remedies against temptations, etc. III, 43. General and particular remedies for penitents, XXI, 5 and 6. Remedies against the temptations of the dying. App. II, § II. Is forgiveness of the injury owed to the offender? IV, 17. If a third party annuls a sworn promise, to what is the promisor bound? V, 18. If the father who was killed forgives, to what is the murderer bound to his children? X, 86. If the violated woman forgives, to what is the rapist bound? 95 to III. If someone shares in the rape, to what is the other bound? Renunciation. Does dispensation cease through renunciation? II, 68. Concerning the renunciation of benefices, XIII, 58. Repetition. When can Baptism be repeated? XIV, 25. When can Viaticum be given? XV, 46 and 47. When can confession be given? XVI, 45 and 46. Extreme Unction, XVII, 8.

[*Latin ed. p. 870*]

858 INDEX ALPHABETICUS: Requirements for absolution from censures, XIX. 14. Requirements for the essence of the Sacrament, App. III. 2. For receiving the Sacraments, 19. For a valid ordination, 32. For a licit ordination, 33. Requirements for reciting the Office, 70 and 75. Regarding the Mass, concerning the matter, etc., 97 to 100. For celebrating [the Mass], namely the altar, etc., 116 to 122. For properly celebrating [the Mass], 116. The Mass should be celebrated solemnly, briefly, etc. 125. Rescripts: Do they cease with the death of the Pontiff, XX. 13. Reserved matters and reservation. Concerning reserved vows, V. 45 and 46. Whether the vow of chastity and religious life is reserved, 47. Whether the second

matter remains reserved, 48. Concerning a penal or conditional vow, 49. What if the one about to receive Communion has reserved matters, XV. 27. Whether one who confesses to a simple confessor is obliged to explain both reserved and non-reserved matters, 28. What if the one about to receive Communion has an excommunication reserved and cannot be absolved by anyone, 29. Whether in the Jubilee, any reservation is removed through confession, XVI. 66. If one forgets a reservation in the Jubilee, can he be absolved by anyone, 68. From which cases in the Jubilee, 71. Can a simple confessor absolve from reservations after the death of the confessor, 96 and 97. Whether a reservation is a restriction, 128. Whether the ignorant are excused, etc., 129. Who can reserve cases for regular clergy, 130. An unjust reservation; and whether the Superior can remit to another for non-reserved matters, 131. Whether venial or internal sins can be reserved, 132. When can an inferior absolve from reserved matters, and whether the penitent should present himself, etc., 133. Concerning those who are traveling, 135 to 138. If one forgets a reservation, can he afterwards be absolved from it by anyone, 140. Whether any reservation is removed if there is confession, 141. Concerning doubtful reservations, whether they can be absolved by a simple priest, 142 and 143. Whether one who has sinned out of license can be absolved from reserved matters, 144. Whether the license extends to sins committed after it, 145. Whether a Bishop can absolve from reserved cases imposed by other Bishops, XX. 35. Whether a dying person can be absolved in the presence of a Bishop, etc., 45. See Cases. Residence. Rectors are bound to residence, VII. 14. To what extent is residence binding, 15. To what extent, if in good faith, etc., 16. Excusing causes, 19 to 21. See rector and license. Concerning the residence of a Bishop, 62. Where Bishops and Cardinals should reside, 18. Concerning the residence of canons, XIII. 50. Penalties for non-residents, 51. Excusing causes, 52 to 57. Resistance to temptations, III. 43. Concerning the cause for not resisting positively, 44. Resolution. See Decretum. Restitution. Roots of restitution, X. 37. From what does justice arise, the obligation of restitution, 36. Whether from a theological fault, 38. Whether from a venial fault, 40. Concerning fault in contracts, 41. To what extent are those who command bound, 42 and 43. Those who give counsel, 44 to 49. Those who give support, 50. Those who point out, 51. Those who receive, 52. Those who participate, 54. Concerning negative causes, 59. He who prevents his neighbor from obtaining a just good, to what extent is he bound, 61. He who defrauds the public treasury, etc. 62. He who acts out of hatred, but without malicious intent, etc. 63. If the owner is far away, to whom and at whose expense should the thing be restored, 64 and 65. If the thing is taken from the owner, to what extent is one bound, 66. If one is uncertain, 67. Concerning delay in restitution, 104. Should one be absolved who has not previously made restitution, 105. If the mediator has not made restitution, or if the confessor has ordered the celebration of Masses, is the penitent

bound to pay again, 106. Excusing causes on the part of the creditor, 116. On the part of the debtor, 117. Necessity is an excuse, 118. What if the creditor is also in need, 119. Whether one is bound with a greater loss, 65 and 117 to 3. A depositary: in what cases is he bound to restore, 38. Concerning the restitution of honor, XI. 3. Excusing causes, 4. Concerning the restitution of reputation, 18. Excusing causes, 19. Concerning the restitution of a religious, XIII. 10. Whether an elector of lesser dignity is bound to make restitution, 37. Restitution of the fruits of a non-resident, how much and to whom should it be made, VII. 22 and 23. Concerning the penalties of canons who do not reside, XIII. 51. Whether a rich person is bound to help a poor person by making restitution, X. 20. If a warning of restitution is not likely to be effective, should it be omitted, XVI. 115. What if the confessor was mistaken concerning the imposition of restitution, 122 to 124. Composition of restitutions: can this be done by a Bishop, XX. 69. Restitution of the fruits of a benefice, see benefice. Mental restriction: when does it occur, and is it licit, V. 15. Retention of a part of the stipend: is it permitted, XV. 65. What if the celebrant remits, etc. 69. See also App. III. 108. Revelations: what kind are true, what kind are false, App. I. 22. To revoke and revocation. Dispensation ceases through revocation, II. 67. When can a donation be revoked, X. 133. Concerning a donation made for the cause of death, 134. Concerning the revocation of privileges, XX. 15. Concerning an express revocation, 16. Concerning a tacit revocation, 17. And whether notification or publication is required, ibid. Accused. When is one bound to confess his own fault, XIII. 82. Whether when the penalty is great, 83. Whether one sins if he imposes a false fault upon himself, 84. Whether if upon others, 85. Whether he can resist, and whether he can flee, 86 and VIII. 2. Whether he can break out of prison, corrupt the guard, and whether others can help him in this, etc. XIII. 87.

[*Latin ed. p. 871*]

RECORDS OF NOTABLE MATTERS. 859 Whether the rubrics of the Missal are obligatory, App. III. 112. The uninstructed, if they have confessed invalidly, whether they are bound to repeat their confession, XVI. 45 and 46. The obligation of questioning the uninstructed, and what kinds of questions should be asked, Tr. ult. 18 to 30. Whether a priest can bless the chrism, XIV. 40. Whether he can confer Confirmation, etc., 44. Whether he can dispense Communion, XV. 8. Whether he can administer Communion from himself, 11. What if he administers Communion only to laypersons, 58. Whether priests, even wealthy ones, can receive a stipend for Masses, 59 to 72. What if a priest retains a portion: if he gives to those celebrating Masses with lesser devotion, 65. Whether a simple priest can absolve from venial sins, XVI. 76. Whether priests are bound to declare themselves fit for confession, etc., 126 and 127. Priests cannot celebrate Mass against the prohibition of the Bishop, even in the churches of regular canons, XXI. 75

and 77. Whether regular canons, novices, and servants can confess to any priest, 110. Concerning the questions to be asked of priests, and whether they are confessors, Tr. ult. 31. If a priest celebrates Mass while in mortal sin, how many sins does he commit, App. III. 13. Whether he is ever bound to celebrate Mass during the year, 111. Knowledge necessary for absolution in necessity, 130. The duty of teaching and preaching, 131 and 132. Counsel for priests attending the dying, App. II. § L. The obligation of priests to make mental prayer, App. IV. § III. What are sacramentalia, App. III. 3. Sacrament. Whether it is licit to administer the Sacraments for profit, IV. 45. The obligation of the parish priest regarding the administration of the Sacraments, VII. 24 to 27. Whether during a plague, 28. Concerning attention and intention in performing the Sacraments, XIV. 1. The intention of the minister, 2. Concerning the administration of the Sacraments under a condition, 3. Whether they should be denied to sinners, 4. Whether a valid and informal Sacrament can be given, XVI. 18. Whether all seven Orders are Sacraments, XVII. 41. Whether the matter and form have been determined by Jesus Christ in a specific way, 15. (And App. III. 8.) Excommunication major deprives one of the passive use of the Sacraments, XIX. 17. From the active use, 18 to III. Excommunication minor deprives one of the passive: whether also of the active, 27. What is a Sacrament, App. III. 1. What is required to constitute a Sacrament, 2. What are the four kinds of Sacraments, 4. What is required for the essence of a Sacrament, 5. Concerning doubtful and mixed matter, under a condition, etc., 8. The intention of the minister and the recipient, 9. More concerning the minister, 10 to 13. See minister. Who ministers the Sacrament, whether he sins if unworthy, 15. Whether one can simulate the administration of a Sacrament, 16. Whether one can simulate the reception of a Sacrament, 17. Whether the minister should intend what the Church does, 18. The conditions of the recipients, 19. Whether it is licit to ask for a Sacrament from an excommunicated person or a sinner, 20. Whether one can give money to the minister for the administration of a Sacrament, 21. The effects of the Sacrament, namely grace, 22 and 23. Character, 24. Concerning the frequency of the Sacraments, App. II. § IV. Sacrifice. Whether one who is not fasting is bound to complete the sacrifice, etc., XV. 54 to II and III. What is a sacrifice, and of how many kinds, App. III. 95. What is the Mass, 96. See Mass. Sacrilege. Of how many kinds is it, IV. 39. Whether a church is polluted by the hidden emission of semen, and by the use of marriage; and whether contact, sight, and words, etc., ibid. and IX. 21 and 22. Whether the theft of a sacred object or something belonging to the church, etc., is sacrilege, IV. 39. Whether the theft of relics is sacrilege, ibid. A religious priest who commits fornication, whether and how many sacrileges he commits, IX. 20. How many he incites, ibid. In what place is it said that he commits sacrilege, 21. Concerning how sacrilege is committed concerning a thing, 23. Concerning the unsightly sight concerning a sacred person, 8. Sacrilegious. Whether one who celebrates

Mass sacrilegiously is bound by the first precept, XV. 32. The salary due to servants, VII. 7. Concerning the prescription of a salary, 9. Concerning the salary of an advocate, XII. 70 and 71. Of a procurator, 72. Leaps. If one is ordained by a leap, whether he incurs suspension, App. III. 40 to VII and 46. Whether it is obligatory to treat an enemy as a friend, in order to free oneself from sin, IV. 16. Health. See Peril. Sowers. Questions to be asked of sowers, tr. ult. 34 to VIII. To satisfy and Satisfaction. Concerning the intention of satisfying a vow, a law, or penance, II. 29. Who can satisfy a debt, or who has a probability of satisfying it, whether he is bound to do something else, V. 31. The obligation of imposing satisfaction, XVI. 47. Whether it can be given after absolution, ibid. Whether under a light penance, 48. Whether satisfaction can be lessened if the penance is for an infirm person in body, 49. In spirit, 50 and 51. What kinds of penances should be imposed, 52 to 54. The obligation of accepting, 55. Of fulfilling, 56. Who differs in satisfaction, whether he sins, 57. Whether the intention of fulfilling is required, 58. What if someone forgets, 59. What if someone fulfills it in sin, 60. Who can change the penance, 61. Whether it falls under a seal, 153 to IV. Scandal. Of how many kinds is it, IV. 23 and 24. How many sins does one commit who incites another to sin, 25. What if the other is already prepared, 26. Whether it should be explained.

[*Latin ed. p. 872*]

860 INDEX ALPHABETICUS: Who was the first to be tempted? 26. Is it permissible to ask for a loan from a usurer, or to receive the Sacrament from a sinner? 27. Who causes scandal to more people, the one who commits more sins? III. 64. To avoid scandal, should temporal or spiritual goods be omitted? IV. 28. Does a woman who shows her breasts commit a sin of scandal? 29. Is it permissible to suggest a lesser evil? 30. Is it permissible to prevent a father from...? etc., ibid. On material and formal cooperation, 31 and following. Scandal concerning Communion, without confession. V. 24 and following. Can a person who is not fasting celebrate Mass if they fear scandal? 53. Knowledge. Can a judge with private knowledge judge? XIII. 63 and 64. Knowledge required in confession, XVI. 99 and 100. For Religious Orders, XIX. 114. On knowledge of the law, and the penalty required concerning impediments to receiving the Sacrament, XVIII. 68. Concerning irregularities, XIX. 83 and 84. On the knowledge required in ordinations, App. III. 35 and 36. To absolve in necessity, 130. To preach, 131 and 132. Scribe. When do scribes sin? XIII. 68. Questions to be asked of them, tr. ult. 33 to IV. Written confession: Is it permissible to confess in writing? XVI. 27. Scruples and a scrupulous person. Rules for scruples, I. 8 and 9. Concerning past confessions, 10. Concerning the fear of sinning, 11. Is a scrupulous person excused from the integrity of confession? XVI. 39. Do scruples fall under the seal of confession? 153 to VII. Seculars. From which cases can seculars be absolved by Religious? XX. 99 to 102. A secret known through

fraud: Is it permissible to reveal it? XI. 8. On the obligation of secrecy, 9. Is it permissible to open letters? 5 and 6. When does the precept of revealing a secret obligate? XIII. 18. To sow. Does a spouse who abstains from procreation sin gravely? XVIII. 40. What if a man sows outside of marriage? 47. What if a spouse prevents procreation? And what if an elderly man spills seed? 50. Seminary. Its utility and rules, VII. 53. Elderly person. When is an elderly person excused from fasting? XII. 25. Senses. Is the unction of all the senses a necessary part of the Sacrament? XVII. 4. Is it to be given to the insane, drunkards, etc.? 11. On the absolution of a dying person deprived of their senses, XVI. 36 and following. Is a sentence required for spiritual penalties, those that incapacitate, or those that deprive? II. 24 and 25. Is a sentence required for penalties based on a false presumption? 26. Is a sentence required for conventional penalties? 27. Is a sentence required for private penalties and those of incapacity obtained through simony? IV. 51 and 52 and XIII. 58. Is the price of an unjust sentence to be restituted? 67. When is a censure said to be latae? When is a sentence to be given? XIX. 2. On the absolution from censures by a general sentence, 12. Burial concerning excommunicated persons, XIX. 20 to VIII. Where should seculars be buried? Where should bishops be buried? Where should Religious and novices be buried? XX. 91. Who should be deprived of burial? ibid. Everyone can be buried in the churches of Religious, 92. Can a parish priest then demand...? And concerning the office over the body, ibid. Can a person be buried in the churches of nuns? ibid. in fine. On the canonical portion, and on the funeral fourth, 93 and 94. Servant. Concerning servants and marriage, XVIII. 62 to II. To whom can servants of Religious confess? XX. 110. See Servant. Sex. Whose should the godfather be? XIV. 36. How does the seal of confession obligate? XVI. 147. Is a consulter bound by the seal of confession? 149. Is the penitent bound by the seal of confession? 150. Is the one who reads the confession bound by the seal of confession? 151. Do completed sins fall under the seal of confession? 152. Is it permissible to warn a penitent with the seal of confession? ibid. Is the object of sin under the seal of confession? 153 to III. Is penance under the seal of confession? ibid. to IV. Are the circumstances relevant under the seal of confession? ibid. to V. Are virtues and scruples under the seal of confession? ibid. to VII. Are natural defects under the seal of confession? 154. A case of a deaf penitent under the seal of confession, 155. What if someone said something under the seal of confession, etc.? 156 to II. Does the confession break the seal if it reveals something with the permission of the penitent? ibid. to VIII. Does the seal break if someone says that they heard a grave sin of a religious person in that monastery? 157. Or in that town, etc.? 158. Does the seal break if someone uses knowledge of confession for external governance to the detriment of the penitent? 159. Can the confessor protect themselves from harm with the risk of revealing the seal? 161. Does a schedule of confessions fall under the seal of confession? 162. What if the penitent threatens, etc.?

163. Is it permissible to use probable opinions with the breaking of the seal? 164. Sign. Signs to know when the law gravely obligates, II. 15. If a dying person gives signs of penance, can they be absolved? XVI. 35. If others testify, 36. If no sign is given, 37. Are betrothals valid through signs? XVIII. 5. Is consent in marriage through signs sufficient? 31. Can someone in mortal danger, and who has extraordinary signs, be absolved? III. tr. ult. 5. Are extraordinary signs required for recidivists? 11. Signs of imminent death, App. II. § VII. Simony: What is it? IV. 40. Mental, conventional, real, and confidential simony, ibid. and

[*Latin ed. p. 873*]

RERUM NOTABILIUM. 861 XIII. 58. The office, by the hand, etc., IV. 41. What is considered Simony according to divine and human law, 42. What constitutes Simony in the admission to a religious order for a temporary period, 43. Whether giving a temporal benefit as the primary purpose, etc., or out of benevolence, is Simony, 44. Whether it is Simony to receive something primarily for profit, etc., concerning the administration of the Sacraments, 45. Selling benefices, 46. Exchanging sacred things, 47. Whether it is Simony to give something in order that someone may omit a spiritual duty, 48. In order to be freed from vexation, 49. Concerning the penalties for Simony, 50 to 53. In the case of actual Simony in the election to a benefice, the elections are null, etc., even if by a third party, etc., 52. Concerning the deprivation of a benefice and the incapacity resulting from Simony, XIII. 58. Whether these must be complete on both sides, ibid. The restitution of the price and fruits that must be restored, IV. 53. Who can absolve from excommunication and grant a dispensation regarding incapacity, etc., ibid. But a sentence is required for deprivation and incapacity, 52, and XIII. 58. Simulation and Simulating. Concerning the simulation of confession regarding anxiety, XVI. 170. Whether a parish priest can simulate the celebration of marriage, XVIII. 29 to 31. Whether it is permissible to simulate the administration of a Sacrament, App. III. 16. Whether the reception of the Sacrament is permissible, 17. Simulty and the Simultaneous. Whether simulty of matter is required with the form in the Sacraments, App. III. 6. Whether a simultaneous touch is required in the Order, etc., 29. Society. The conditions of a society, X. 222. Whether the principal sum must be paid to the lord first, 223. Concerning the division of profit and loss by chance, 225. Concerning a pact for the safety of the principal and for the care of the animals, 226. Whether a contract of three contracts is permissible, 227. Concerning a society between brothers, 229. How many ways are permitted for a society, 230. Sodomy. If a husband engages in sodomitic acts with his own wife, what sin does he commit, IX. 16 and 25. In what does it consist, 24. Whether it must be explained who is the actor, etc., ibid. The penalties for sodomy. In what matter, 26. Solemnities. The solemnities required for the alienation of ecclesiastical goods, XIII. 62. Whether a contract without

solemnity binds in conscience, X. 126. The solemnities required for the promulgation of censures, XIX. 9. Solicitation in the act of confession, 168. Under the pretext of confession, 169. In the confessional, etc., 167. Concerning solicitation occurring during confession, 168. Under the pretext of confession, 169. In the confessional, etc., and whether simulation is required, 170. What if the penitent solicits, 173. If the confessor turns to touch, 174. Whether a confessant who is already reformed should be reported, 175. Whether penitents can be absolved before reporting, and whether they are bound by letters, etc., and if they contradict, etc., 176. Whether one who falsely accuses an innocent person of solicitation incurs a reservation, 177. What if the warning of denunciation is not effective, 178. Denunciation to be made by others than by the solicited, 179. Concerning doubtful solicitation, 180. Particular cases, 181 and 182. Confessors who solicit are incapable of celebrating, 183. What if the penitent falsely accuses, 129. Dreams. Whether they should be given credence, IV. 34. Sorbetum. Whether it breaks the fast, XII. 14. Sister. See Brother. Divinatory lot, whether it is permitted, IV. 34. Whether a divinatory rod is permitted, 35. In a society, the lot and its loss pertain to the lord, X. 223. The benefit of the lot, etc., 224. What is sortilegium, IV. 34. Species. Whether in the case of lascivious delight, the species should be explained, III. 48. Whether consecration in another species is permitted, XV. 3 and 4. Whether the grace is increased while the species remain, 6. Specific sins, their distinction, and from what roots they should be derived, III. 55 and 56. A doubtful speculative matter, I. 13 and 14. A preceptive, ibid. Hope. What it is, IV. 6. The object of hope, 7. Vices opposed to it, 8. The act of hope, 13. Concerning a mutual loan under the hope of profit, X. 143. Whether the betrothals of children are valid, XVIII. 1. Whether one who promises without the intention of contracting, etc., and one who does so by deceit or error, etc., ibid. Whether they are valid if a condition caused the contract, 2. If there is fear, 3. Whether a mutual promise is required, 4. Whether external acts are required, and if a father promises betrothals for his son, 5. Whether, in doubt, freedom should be favored if the Pope promises, 6. Whether betrothals between the impuberes are valid, 7. Betrothals are dissolved, I. In marriage; and whether the offending party remains free, 13. II. By mutual consent. Whether the impuberes, etc., 14. III. By impediment. Whether a dispensation, etc., 15. Whether disparity dissolves betrothals, 16. Whether disagreement is an impediment. Whether a dispensation, etc., 17. By profession and order, 18. V. By change, 19. VI. By departure, 20. VII. By term, 21. VIII. By profession and order, 22 to 24. Whether a vow of chastity, etc., 25. Whether the authority of a judge is required, 26. What proof is required, 27. What is a spiritual betrothal in contemplation, App. I. 17. Spouses. What if one contracts marriage with a sinner, XIV. 6. If they are prepared to contract marriage, XVI. 114. Whether touch between spouses is licit, XVIII. 7. What if they contract marriage in sin, 29 to 2. Whether it is permissible to simulate the celebration of marriage,

ibid. Whether spouses are

[*Latin ed. p. 874*]

862 INDEX ALPHABETICUS

impedim. Whether those interrogated must confess, 57.

Whether it is permissible for betrothed couples to proceed to the bride's home, see the end of that treatise, 3.

Sponsio. What is betrothal, and whether it is permissible, X. 214.

Spurius. See Filius (Bastard).

Whether statues are permissible in the exposition of the Most Holy Sacrament, XV. 88. Decree of Pope Pius XXII.

Status. Election of a state of life, see the end of that treatise, 39 and 41.

Vocation to the ecclesiastical state, 40.

Whether it is a sin to recall someone from a religious vocation, Appendix IV, § I to VIII.

Sterilitas. In the matter of a lease, to whom does the damage caused by sterility pertain, X. 207.

Stipendium Missæ. Whether priests, even wealthy ones, can receive a stipend for a Mass, XV. 59.

Whether multiple stipends can be offered for a single Mass, 60.

What is a just stipend, 61.

Whether a higher fee can be demanded, and who can prohibit a lower one, 62.

Whether one sins gravely by omitting a Mass for a small stipend, 63.

Agreement regarding a stipend, 64.

What if someone retains a portion for themselves, etc., or has it celebrated by less worthy individuals, 65.

If for a special purpose, etc., 66.

Whether chaplains can retain a portion of the stipend, 67.

Whether administrators of a church can, 68.

What if the celebrant remits a portion of the stipend, and what if the executor of a will, 69.

Whether someone who collects alms for Masses can retain something for their labor, 70.

Exchange of Masses, whether it is permissible, 71. See also Appendix III, 106 and 108.

Stola. If a priest communicates outside of Mass, whether he should wear a stole around his neck, XV. 88.

Stuprator. Whether rape, with the consent of a virgin, is a special sin, IX.

14.

Whether restitution should be made to the parents in such a case, X. 91.

To what is one bound if it is done with a feigned promise, etc., 93.

Limitations regarding the aforementioned judgment, 94 to 96.

To what is one bound if the rapist has a vow of chastity, 97.

If he is a blood relative, etc., 98.

To what is one bound if it is done by force and threats, etc., 92.

Subdelegare. Who can delegate authority, II. 63. See also XVI. 82 and XX. 34 and 58.

Subdiaconus et Subdiaconatus. Whether a subdeacon, if he ministers at a last anointing, sins gravely, Appendix III. 14.

Matter, form, and office of the subdiaconate, 57.

Whether a subdeacon, ministering without a stole, sins, ibid.

Requirements for the subdiaconate, 58.

Subditus. If a superior commands something doubtful in terms of sin, whether one is bound to obey, I. 18 and XIII. 17.

Whether the vows of a subject are invalid in themselves, V. 37.

What is required for a subject to be censured, XIX. 4.

Successor. Regarding the succession of a lessor, X. 206.

Suffragium quoad restitutionem ad quid obliget, X. 50.

Superior si præcipit aliquid dubium, quomodo obligat, I. 18.

If a command causes damage, or is difficult, ibid. and XIII. 17.

Obligation of a superior to dispense, II. 52.

Whether one is valid if one dispenses in bad faith, or without a reason, 53.

Superiors regulares in quo dispensare possunt, 60.

What if they do not correct, XIII. 2, near the end.

Licentia præsumpta, an sufficiat ad non lædendam paupert., 11.

How one sins if it is unjustly denied, 12.

For frivolous uses, 13.

Whether a command to reveal a secret is binding, 18.

Whether a superior can remit a penitent to an inferior for not keeping a secret, XVI. 131.

What if someone forgets a secret confided to a superior, 140.

Whether a reservation is removed by a confession made in bad faith to a superior, 141.

Superstitio. What is superstition, and in how many ways is it committed, IV. 34.

Regarding the divining rod, 35.

Vain observances, 36.

Sympathetic powder, 37.

Whether superstitions should be denounced, XIII. 78.

Supplicatio quando est subreptitia, II. 47.

Supplere. Whether a pact to supply sheep in a contract of partnership is licit, X. 226.

Surdus circa confessionem, XVI. 35.

Casus pænit. surdi. When is a deaf person irregular, XIX. 117.

How should a confessor behave with deaf and mute individuals, see the end of that treatise, 44 and 45.

Susceptio et Suscipere. Intention and other requirements for receiving the Sacrament, Appendix III. 9. See Sacrament.

Suspensio. What is suspension, XIX. 64 to 66.

When do ordained individuals incur suspension, Appendix III. 46.

More about suspension, 84.

Suspicio temeraria quando est peccatum, XI. 1 and 2.

Synderesis. What is synderesis, I. 2.

Tabacus per nares sumptus an lædat jejunium, XV. 38.

Whether the smoke of tobacco, 39.

Whether chewing tobacco, 40.

Tabella Missarum affigenda in sacristia, XV. 68.

Tabellarius missus eodem a duobus, an a singulis liceat accipere mercedem, X. 209.

Tabula possit eedi in naufragio, VIII. 1.

[*Latin ed. p. 875*]

RECORDS OF NOTABLE MATTERS.

863. The tacit revocation of privileges, XX. 17.

864. Who are considered to be touched by mortal sins, IX. 3.

865. Whether a touch in the church constitutes sacrilege, IV. 39 and IX. 22.

866. How does a woman sin when she allows herself to be touched? IX. 5.

867. What kind of sin is committed by touching a boy or a woman? 25. What kind of touch between relatives? Ibid., at the end.

868. To what extent are promises of marriage binding when made solely through touch? X. 95, ad V.

869. If a confessor, disturbed by touch, deviates from it, should he report it? XVI. 174.

870. Is it permissible between betrothed individuals? XVIII. 7.

871. Is it permissible between spouses, and with themselves? 42.

872. A physical and simultaneous touch is required for Holy Orders, App. III. 29.

873. Taxes for a Mass stipend, XV. 62 and 64.

874. Time. How much is required to establish a custom? II. 79. To repeal a law, 80. Also, for ecclesiastical matters, 11.

875. The time of ordination, App. III. 40 to VIII.

876. Intervals, 41 and 42.

877. The time for receiving an office, 74 to VI.

878. When is a formal and interpretative temptation of God committed? IV. 38.

879. Remedies against shameful temptations, III. 43.

880. If there is a reason not to resist positively, is there an obligation? 44.

881. Remedies for the dying against temptations, App. II. § II.

882. Does a minor benefit obligate one to attend the canonical hours? App. III. 67.

883. Term. Are betrothals dissolved by the expiration of the term? XVIII. 21.

884. Are tertiaries exempt from lay power? XX. 21.

885. By whom can a vow made in favor of a third party be relaxed? V. 19.

886. Concerning a vow made in favor of a third party, 41.

887. Wills, X. 235. If it is known what the testator's will was, etc., and if there is only one witness, ibid.

888. Testator. Can the testator's last wishes be changed by the Pope, or by a Bishop? X. 236.

889. Are goods to be given to poor relatives? 237.

890. Witness. When is a witness obliged to testify? XIII. 79.

891. If he omits to say the truth, does he sin, and if so, how? 80. If he conceals something, 81.

892. If a witness testifies that a dying person gave signs of repentance, can he be absolved? XVI. 36.

893. Concerning the assistance of witnesses in marriage, XVIII. 70.

894. What if a witness knew of an impediment? 73.

895. To whom does a found treasure belong? X. 70.

896. How great is fear or dread? III. 16 to 18.

897. Does fear excuse one from precepts, and from which ones? II. 44.

898. Is a dispensation granted due to fear valid? 54.

899. How does one sin if, out of fear, he omits correction? IV. 21.

900. A vow made out of unjust fear is null, V. 23.

901. Can someone who fears relapse maintain their resolve? XVII. 24.

902. When is fear a cause for divorce? XVIII. 92. See Dread.

903. Title. Concerning a colorable error concerning confession, XVI. 90.

904. What title is required for Holy Orders, and how great is it? App. III. 37 and 38.

905. Does one incur suspension if ordained with a false patrimony? 39.

906. Tonsure and those who have received the tonsure. What is the first tonsure? What is required to receive it, and does one sin grievously if ordained without tonsure? App. III. 47.

907. The obligation to receive the tonsure, and the habit, 49 and 50.

908. When do those who have received the tonsure enjoy the privileges of canons and of the forum? XX. 23 and 24. And see App. III. 48 and 51.

909. Tradition is required in a donation for the acquisition of ownership, X. 132. And in a sale, 167.

910. The tradition of instruments in Holy Orders, XVII. 16.

911. Tridentinum. Faculty. Is it permissible? XX. 29.

912. Where the Tridentine decrees are not accepted, is it permissible to use the aforementioned faculty? 30.

913. Concerning cases after the Council, etc., 36.

914. Triple contract, how is it perfected, and is it permissible? X. 227.

915. Tutela and Tutor, to what are they obligated? X. 234.

916. Can a cleric be a tutor? 195.

917. Vagrants can contract marriage before any parish priest, XVIII. 72.

918. Value. One must stand by the value of an act, I. 16.

919. Value of a Mass. App. III. 105.

920. Vain observances. See Observances.

921. Is it a sin to sell something on a feast day? VI. 13.

922. To whom does the danger and the fruit in a sale belong? X. 169.

923. Alien things are, VII. 13.

924. Concerning the ownership of money, and to whom it belongs, 171.

925. How much do excessive wages decrease? 174.

926. When can something be sold for a higher price? Ibid.

927. Concerning a sale under auction, 175 to 177.

928. Can something be sold for a higher price due to a delay in payment? 178.

929. Concerning chirographs, 179.

930. A pact of redemption, is it lawful? 180.

931. Concerning a defect in a thing, 185 to 187.

932. Concerning female sellers, 169.

933. When something has been sold to two people, to whom does ownership belong? 190.

934. To whom does a sold thing perish? 191.

935. Sellers. Questions to be asked of them. Tr. ult. 35.

936. Poison. When does a cleric incur excommunication for giving poison? XX. 48.

937. Is venial sin harmful? III. 23.

938. In how many ways does venial sin become mortal? 67.

939. Venial sin becomes mortal, 68.

940. A vow to commit venial sin is illicit, V. 25.

941. Does venial sin obligate one to make restitution? X. 40.

942. How should one elicit sorrow for venial sins? XVI. 23.

[*Latin ed. p. 876*]

864 INDEX ALPHABETICUS

True. Confession must be true, without falsehood, XVI. 28.

Obscene words. When are they mortal? IX. 9. Does one sin by hearing them? 10. Are they sacrilegious when spoken in church? IV. 39 and IX. 22.

Truth. Required in an oath for it to be lawful, V. 14. If a witness omits or conceals the truth, are they bound to make restitution? XIII. 80 and 81.

Vestments required for celebrating. App. III. 118.

Vexation. Is it simony to give money to remove vexation? IV. 49.

Viaticum. Can the obligation of receiving the Viaticum be given to laymen, or to themselves, etc.? XV. 10. How should it be given? 12. The obligation of receiving the Viaticum and when can it be repeated? 46 and 47. If someone has communicated only a few days prior, and the article of death is imminent, are they bound to receive the Viaticum? 48. If on the same day? 49. Can those words be omitted: "Receive the Viaticum," etc.? 50. Is one excused from confession when receiving the Viaticum, etc., and what if, having received the Viaticum, it is discovered that no confession was made? 24. When can the Viaticum be given and repeated? App. II. § IV. ad 11.

Vicarius. Can a vicarius dispense? II. 57. Does a vicarius of a bishop have ordinary jurisdiction, and can he delegate it? XVI. 81. Can he dispense in marriage proclamations? XVIII. 59. Vicarii capitulares are considered under the name of the bishop, but not vicarii of the bishop, XX. 31.

A vicarius has the same power as the bishop by ordinary right, and therefore can absolve a cleric from a fault, 47.

To conquer. If someone wins in a prohibited game, are they bound to

make restitution? X. 217. Remedies to be used to overcome scruples, I. 8 and 11.

Vincible. See Ignorance.

Wine. Is it permissible to drink wine during fasting? XII. 13. What should be done if wine is discovered in the Mass, etc., and what if there is doubt, etc.? XV. 54.

Wine required for the Mass. App. III. 98.

Violators of immunity. When do those who violate immunity incur a papal excommunication? App. III. 80. in fine.

Vir. See Husband.

Divinatory rod. What is a divinatory rod? IV. 35.

Virgin. Can a virgin expose herself to the danger of death in order to preserve her chastity? VIII. 1. in fine. Can she undergo the hands of a surgeon? 2. in fine. Is it a special sin to violate a consenting virgin? IX. 14. Does the obligation of restitution arise for defloration? X. 91. What if the violated one could perceive the deception? 94. If she forgives, if only touch was used? 95. If she was previously corrupted; if she rejects marriage? 96. See Legate.

Virtues of penance. Do the virtues of penance fall under the seal? XVI. 153. ad VI.

Visions. How many are there, and how can we distinguish true visions from false ones? App. I. 19 and 20.

Visit. A bishop cannot visit regular clergy, and their churches, XX. 79. Which parishes can he visit? ibid. Can he visit the enclosure of nuns? 80.

Vitandus. Can one who is "vitandus" absolve a dying person? XVI. 92. What is meant by "vitandus"? XIX. 15. Clerics who are "vitandus," 16.

What kind of vice must be manifested? X. 185 ad 187.

Vocal. Confession must be vocal, XVI. 27.

Vocation. Does one sin by preventing or urging a girl to enter a monastery? VII. 5. and XIII. 25. Does one sin by neglecting a vocation? XIII. 26. How should a vocation to a religious or ecclesiastical state be examined? Tract. ult. 39 ad 41.

Vocation required for Orders. App. III. 45 ad XIII. Does one sin mortally by resisting a vocation? App. IV. § I. ad VIII.

Spiritual flights in contemplation. App. I. 17.

Last will. III. 3 ad 6.

Last wills.

Votiv. Testament.

Votive. Concerning votive Masses. App. III. 126.

A doubtful vow, or one doubtfully fulfilled, does it still obligate? I. 17. Concerning the intention of fulfilling, II. 29. Dispensation with foreigners, 42. Concerning the obligation of the will, and what should be presumed in

doubt, V. 21. In doubt, the use of reason, does it obligate the vow? 22. What if it was made out of fear, or error? 23. Concerning the possible and best matter, 24. Does a bad end invalidate a vow? 25. What about a vow to commit a venial sin? ibid. Not seeking dispensation, 26. Concerning marriage, 27. Concerning not vowing again, 28. Concerning a light matter obligating a grave one, and whether a light matter can obligate under a grave one; whether a heretic is bound by all the vows of his testator; and whether it is permissible for a father to make vows that harm his legitimate children, and many other things worthy of note, 29. Concerning the conditions of vows, 30. Disjunctive vows. Forgetting a vow, and how much probability is required to hold it validly? 32 and 33. Concerning a vow of religion, 34. Concerning the change of matter of a vow, 35. Concerning invalidation, 36 and 37. Commutation, 38. Dispensation, 39. Concerning dispensation in good faith or bad faith.

[*Latin ed. p. 877*]

REMARKABLE MATTERS. 865

40. What if it has been issued in favor of a third party?

41. Who can dispense in vows?

42. Who can delegate [authority]?

43. Concerning reserved vows, 45 and 46.

44. Concerning oath-taking, if it is reserved, 47.

45. Does the subsequent matter remain reserved?

46. Is a penal vow, or a conditional vow, reserved?

47. Can the Pope dispense in solemn vows?

48. Who, being bound by a vow of chastity, takes a virgin, promising marriage; to what is he bound? X. 97.

49. Concerning the vow of poverty, XIII. 5 to 14.

50. Chastity, 15.

51. Obedience, 16 to 20.

52. Concerning the obedience of nuns, 21.

53. Does a vow of chastity, or the acceptance of Orders, dissolve betrothals? XVIII. 25.

54. What if a spouse is hindered by a vow from the use of marriage?

55. Can Bishops and Regular clergy dispense in a vow of chastity? 54 to VI.

56. Concerning a solemn vow dissolving marriage, 62 to III.

57. Can the Pope dispense in this matter? 65.

58. The power of Regular clergy concerning vows and oaths, XX. 108.

59. Concerning a vow of chastity with spouses and betrothed, 109.

60. Usury: what it is, and whether it is permissible, X. 142.

61. Profit given gratuitously: can it be retained? 144.

62. Concerning titles of loss and gain ceasing, 148 to 152.

63. Concerning danger, 153 and 154.

64. Concerning *montibus* (Mons) of piety, 155.

65. Title of the penalty of convention, 156 and 157.

66. Concerning obligatory agreements, 159 to 161.

67. The obligation of usurers and heirs, 162.

68. Concerning those cooperating in usury, 163 and 164.

69. The use of marriage: is it permissible to contract with a doubtful impediment? XVIII. 35.

70. Is it permissible to seek or render [favors] with a doubt? 36.

71. If marriages are contracted with a doubt, 37.

72. If with danger to health, 38.

73. If for pleasure, or with an adulterous mind, or in an improper manner, 39.

74. If a spouse withdraws, does he sin? 40.

75. What if at an improper place or time; if during pregnancy, etc., and if a vow or incest, etc., 41.

76. Are touch and lascivious pleasures permitted to spouses? 42.

77. When is a spouse bound to seek [conjugal relations]? 43.

78. If he refuses once, does he sin? 44.

79. If there are no more children, etc., 45.

80. What if a man sows outside the vessel [wife]? 47.

81. If he seeks [conjugal relations] being amorous or drunk.

82. Concerning impediments due to incest. If with damage to health or offspring, 49.

83. Uterus: Can a child be baptized in the womb? XIV. 10.

84. Can a wife annul the vows of her husband? V. 36, *in fine*.

85. The obligations of a wife, especially concerning following her husband, VII. 13.

86. Concerning the goods of a wife, X. 5.

87. If a husband squanders [his wealth], 14.

88. Concerning thefts by wives, 33.

89. Concerning the support due to them, XVIII. 51.

90. If a wife rises or urinates after coitus, does she sin? 50.

END OF THE ALPHABETICAL INDEX.